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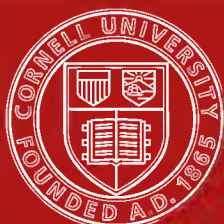
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# THE LAW OF BANKRUPTCY

A TEXT FOR BUSINESS MEN AND STUDENTS OF  
BUSINESS, WITH COPIES OF THE NATIONAL BANK-  
RUPTCY ACT, GENERAL ORDERS OF THE SUPREME  
COURT AND THE OFFICIAL FORMS, WITH PROBLEMS

BY

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## PREFACE

In the last five years there have been over 84,000 bankrupts in the United States, with liabilities approaching a billion and a half dollars.

	5 Years	Average per Year
Number of Bankrupts.....	84,767	16,953
Liabilities .....	\$1,317,493,264	\$263,498,653

Certainly every well-informed business man ought to know something about the way in which bankrupt estates are administered and about the rights, duties and liabilities of bankrupts and creditors. Indeed, the credit men's associations have been urging business men to participate in the administration of bankrupt estates as receivers and as trustees; probably unfamiliarity with the law has been the chief cause of the business man's reticence. There can be little doubt that the business man who would undertake this work would have no more difficulty in learning the essential parts of the law than the lawyer has in learning about the important parts of a business.

Unfortunately for the business man, there has been no text on bankruptcy intended chiefly for the layman. Such texts as have appeared contain too much of the technical and procedural to appeal to the average business man. To supply this deficiency is the purpose of this book. It is intended not only for business men but for advanced students in university courses in commerce. A special feature is the group of problems taken from cases adjudicated by American courts. These problems illustrate all phases of the law except those that deal with matters of procedure which are of interest only to the lawyer.

Part I is the text to be studied. The reader will do well to

read this through without referring to the statute. Then he will be in a position to study each section carefully, and for this purpose he should read the pertinent part of the National Bankruptcy Act, printed in Part II. References to the Act are printed thus: (7, a, 2). This means that the question discussed in the text is treated in the Act, Section 7, paragraph a, clause 2. When the General Orders promulgated by the United States Supreme Court for carrying the Bankruptcy Act into effect are referred to, the notation is made thus: (G. O. VIII), which means, General Orders, number VIII, printed as a part of Part II hereof. Forms referred to in the text are the official forms printed in Part III.

I am sensible of my obligation to my colleague, Mr. Richard P. Ettinger, for aid in preparing and selecting the problems, and take this opportunity to express my appreciation.

CHARLES W. GERSTENBERG.

April, 1917.



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# THE LAW OF BANKRUPTCY

## PART I: PRINCIPLES.

1. *Purpose of bankruptcy.*—The purpose of modern bankruptcy acts is to help the creditors of insolvent debtors and the insolvent debtors themselves. The former derive their benefit from the statutes by being certain of reaching all the debtor's property which, by law, should be dedicated to the payment of his debts, and by being assured equality of treatment. Debtors are benefited by the act by being permitted to get rid of their debts when they become a burden to the extent of mortgaging the debtor's future. If a debtor is unfortunate enough to have debts in excess of his assets, his future earnings will have to be used to pay the past debts. The incentive to become or remain a productive member of society is taken away. He is, in effect, told by the bankruptcy statute that if he has been honest in the conduct of his business he may regain his economic freedom by surrendering all his property to his creditors and beginning life anew with a clean slate.

2. *Ancient bankruptcy acts.*—Bankruptcy statutes were passed in Rome and later in England. Down to the opening of the eighteenth century they were one-sided; they were intended to protect the creditors. Indeed, some of these statutes were harshly criminal in their nature. Thus the Roman law provided sale into slavery or death as a punishment for the insolvent debtor. When it was proposed to give Congress the right to pass uniform laws of bankruptcy, Roger Sherman arose in the Constitutional Convention and said that he did not propose to have it possible in America, as it was in England, for debtors to be put to death.

The bankruptcy statutes illustrate the importance of promising reward as well as threatening punishment. It seems that all the brutality of the older statutes was insufficient to prevent debtors from seeking to save themselves and their property from surrender for the benefit of creditors. About 1705, therefore, while failure to surrender goods or person was made a felony, a

small allowance was made from the insolvent estate to the bankrupt who willingly conformed to all the provisions of the law, and finally he was to be discharged from all debts, with certain exceptions, that were due before the bankruptcy.<sup>1</sup>

Another interesting point about the old statutes is that they applied to traders only. Remember, if you will, that until comparatively very recently trade was a badge of social inferiority. To call a noble a bankrupt was to open the door to a suit for slander. The bankruptcy act of 1861 in England made non-traders in that country subject to bankruptcy. In this country non-traders were permitted to go voluntarily into bankruptcy by the Act of 1841, but the same act protected them from prosecution as involuntary bankrupts.

3. *Bankruptcy acts in America.*—The United States Constitution<sup>2</sup> says that Congress shall have the power to establish “uniform laws on the subject of bankruptcies throughout the United States.” Under this power Congress has passed four separate acts as follows:

Date of Act	Amendments	Repeal
April 4, 1800		Dec. 19, 1803
August 19, 1841		March 3, 1843
March 2, 1867	July 27, 1868	
	June 30, 1870	
	July 14, 1870	
	June 8, 1872	
	Feb. 13, 1873	
	March 3, 1873	
	June 22, 1874	
	Apr. 14, 1876	
	July 26, 1876	June 27, 1878
July 1, 1898	Feb. 5, 1903	
	June 15, 1906	
	June 25, 1910	
	Feb. 26, 1917	

In the interim between these acts, the state laws have regulated bankruptcies. The present act has not repealed these laws; it merely suspends their operation, and if the federal act were

<sup>1</sup> Under the Roman *cessio bonorum* the debtor, by surrendering his goods, was exempted from imprisonment and corporal punishment.—2 Blackstone's *Commentaries*, 473.

<sup>2</sup> Art. 1, Sec. 8, Clause 4.



to be repealed the state laws<sup>1</sup> would immediately spring into full vigor. In California, Connecticut, Georgia, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, North Dakota and Rhode Island the insolvency laws have provided for voluntary and involuntary distribution of an insolvent's estate and for discharge from provable debts. In the other states the insolvency laws merely regulate voluntary assignments for the benefit of creditors. In a few states the debtor might be discharged from further obligations on his debts by a vote of the creditors. Those states include Colorado, Idaho, New York, Oregon, Washington and Wisconsin. Other states allow a discharge of such debts only as the creditors prove as claims in the insolvency proceedings. These states include Arizona, Arkansas, New Jersey, South Carolina, Texas and Wyoming. In many states it is possible for the insolvent to give preferences. But it must be remembered that all these state insolvency laws have been superseded by the federal act and that probably Congress will never again surrender its power to the states. If the present federal act is repealed, probably another will immediately take its place. It is likely, however, that the present law will remain but will be subject to gradual amendment. The student, therefore, can quite dismiss from his mind the question of state insolvency laws.

4. *Evils existing before the act of 1898.*—The reader will be interested to know something about the value of the present bankruptcy act to business men. One can get a good idea of this value if he will but contemplate conditions as they existed in the days prior to 1898, when bankruptcy was regulated by the state insolvency laws. During those periods in our history when we have had no bankruptcy act, mutual confidences between debtors and creditors were impossible, as was any co-operative action among creditors themselves. Insolvency always meant lawsuits. If one creditor had suspicion that a debtor was about to fail, immediately such creditor would rush to court and levy an attachment or execution. Then would begin a mad race for precedence between executions, attachments and the like—between the sheriff, receiver, assignee and mortgagee—to see which one would get possession of the debtor's property first, the receiver

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<sup>1</sup> It is customary to designate the state laws as insolvency laws, to differentiate them from the federal bankruptcy acts.

frequently finding upon arrival that he was forestalled by the sheriff under a levy or by some preferred mortgagee or assignee placed in possession by the debtor. In those days there was no possibility of co-operation among creditors, no incentive to a frank recital by a debtor to his creditors of the true condition of affairs, no chance for peaceable adjustment. Each creditor was eyeing the others, ready at a moment's notice to rush in ahead of them. It was the unmitigated reign of the "Survival of the Fittest."

Under the stern rule of the Bankruptcy Act, however, this wild scramble for precedence has ceased and co-operation among creditors has become the order of the day. This change was particularly manifest during the financial depression just passing.<sup>1</sup> Instead of creditors rushing to the courts, instead of debtors giving preferences, debtors and creditors alike have assembled in meetings, and there the debtor's books have been examined, his resources been inquired into, he and his creditors have consulted together; and in numberless cases, readjustments of his affairs have been effected upon a basis satisfactory to all, without court proceedings and with mutual good will.<sup>2</sup>

Mr. Edward D. Page, one of the foremost authorities in the United States on credits, described the early business of H. B. Clafin, the well-known dry goods merchant, as follows: "The chances which Mr. Clafin was taking in the extension of credits became notorious. He, however, had the cleverness to protect himself under the existing insolvency practice of the time. Being the principal creditor of most of his debtors, he retained a close hold and kept a sharp watch on their businesses, often compelling them to buy goods from him at his own prices; and so, in case they came to mishap, his agents would control the situation, replevining or attaching their entire assets so that the Clafin debt should be paid before any other creditors could share in the proceeds. Unethical as this process now sounds, it was not condemned by current commercial law and custom, and it was defended as being the only way in which the large credits necessary for the development of the western country could be extended. For a short period from 1867 to 1878 the

<sup>1</sup> This reference is to the depression of 1907.

<sup>2</sup> Adapted from Remington, *Bankruptcy Law and Peaceable Settlements of Business Failures*, a booklet published by the National Association of Credit Men.

United States bankruptcy law, which represented aspiration rather than efficiency, somewhat interfered with this process; the law of 1898 finally put an end to it."<sup>1</sup>

5. *Jurisdiction of courts.*—Under present practice, bankruptcy proceedings are begun in the federal District Courts. Each court has authority to adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within its respective territorial jurisdiction for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside or have their domicile within the United States, but have property within its jurisdiction, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within its jurisdiction.

The court first getting jurisdiction in the bankruptcy proceedings retains control, but if it is necessary to reach property or persons within the territorial limits of the jurisdiction of another District Court,<sup>2</sup> the trustee in bankruptcy applies to that other court for help in the original action.

The federal District Courts control all matters that are strictly necessary in connection with the bankruptcy proceedings, such as the powers of the trustee, the supervision of the bankrupt estate, distribution to creditors of moneys in the trustee's hands, and settlement of the trustee's accounts; but all other matters which are collateral in their nature, such as suit by the estate to recover moneys due, avoidance of preferences and the like, are taken before the state courts unless, of course, the federal courts have jurisdiction on some grounds other than bankruptcy, e. g., on the ground that the litigants are citizens of different states. Practice in bankruptcy proceedings is regulated by the National Bankruptcy Act and by the General Orders of the United States Supreme Court (30).

6. *Voluntary and involuntary bankruptcies.*—The law now provides that a person may be declared a bankrupt on his own initiative or on the petition of his creditors. In voluntary bankruptcy, the debtor himself files a petition together with a schedule of his assets and liabilities (7, a, 8). The petition, the form of

<sup>1</sup> *Independent*, Monday, July 30, 1914, Vol. 79, p. 76.

<sup>2</sup> There are 95 federal District Courts in the United States at the present time, exclusive of those in the non-contiguous territory.

which is prescribed,<sup>1</sup> states that the debtor "owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefits of the acts of Congress relating to bankruptcy." Thus the object of voluntary bankruptcy is to insure equitable distribution of assets and relief from liabilities that hamper the debtor's productive activities.

The question very frequently arises whether a debtor should await the filing of the petition by his creditors or should take the reins in his own hand and file his own petition. An honest debtor who finds himself in difficulties makes no mistake in going to his creditors and asking their advice. Usually, if bankruptcy is deemed expedient, it is then left to the creditors to file the petition, the debtor making the way easy by stating in writing his willingness to be declared a bankrupt. The involuntary petition must be signed by three or more creditors who have provable claims aggregating at least five hundred dollars; or by one creditor having a provable claim for the same amount, provided all the creditors, excluding employees and near relatives, are less than twelve in number (59, b). In addition, the petition must state that the debtor owes a total of at least \$1,000 (4, b.).

7. *Proceedings brought at instigation of unscrupulous lawyers.*—A word of warning to the business man at this point will not be out of place. We quote from Ettinger & Golieb's "Credits and Collections":<sup>2</sup>

"Now and then the filing of a petition is brought about by the acts of unscrupulous attorneys. Thus, a small debtor who finds himself insolvent may consult an unprincipled attorney whose first thought is neither of the debtor nor of the creditors, but only of himself and the prospects for large fees. Such an attorney obtains a list of creditors, not with the honest intention of arranging for a settlement, but merely to ascertain which of the creditors can be influenced to file a petition. These facts are then conveyed to a confederate, another attorney of the same despicable type, who procures the signatures of three tractable creditors to a petition and nominally acts as their attorney. He then makes every effort to induce a majority of the creditors to permit him to be their representative in the meeting called to elect

<sup>1</sup> See Form No. 1.

<sup>2</sup> Page 335.

the trustee. If the confederate succeeds in electing his nominee he then procures an order authorizing him to act as the trustee's attorney. Now the whole situation is in hand; the case is all "sewed up." One scamp represents the debtor and the other represents the trustee; between them they control the subsequent handling of the estate.

"The fees and expenses coming out of the assets of the estate are shared by the unscrupulous attorneys. But these collusive situations are susceptible to more serious abuses. It is hardly to be expected that an estate so controlled will be zealously managed with a view to economy. Nor can it be expected that under the circumstances described the attorney for the creditors will expose and denounce the client of his accomplice if he discovers concealed assets, fraud, or material irregularities. An honorable debtor who falls into the clutches of such rascals suffers with his creditors, for no effort will be made, in good faith, to effect a settlement; the estate will yield these attorneys greater revenue than the poor small debtor can afford to pay, and the fees are bigger if the case is carried through to final liquidation. The result is a very lean dividend for the creditors and a blackened record for the debtor.

"Honest debtors can discharge their first obligation to their creditors by consulting reputable attorneys only. Creditors, on the other hand, should refuse to give the representation of their claims to any attorney soliciting them unless they know him to be of unimpeachable integrity. Fortunately, the vigilance of the legal profession and of the credit men's associations has succeeded in reducing the evils growing out of unprincipled practices by legal birds of prey."

8. *Who may become bankrupts.*—We saw that, under some of the older bankruptcy acts, traders only could become bankrupts. The tendency is constantly toward a broadening of the scope of the bankruptcy acts, but even today there are restrictions on the persons to whom the Act may be applied. Any person, except a municipal, railroad, insurance or banking corporation, may become a voluntary bankrupt (4, a). An involuntary petition in bankruptcy may be filed against any natural person except a wage-earner<sup>1</sup> or a person engaged chiefly in farming

<sup>1</sup> Wage-earner shall mean an individual who works for wages, salary or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year (1, 27).

or the tillage of the soil, or against any unincorporated company, or against any moneyed, business or commercial corporation, except a municipal, railroad, insurance or banking company (4, b).

9. *Acts of bankruptcy*.—We have shown that a person may not become an involuntary bankrupt unless he owes at least a thousand dollars and is prosecuted by three creditors to whom, in the aggregate, \$500 is due.<sup>1</sup> The involuntary petition must also allege that the bankrupt has committed one of the five so-called acts of bankruptcy within four months of the filing of the petition.<sup>2</sup> We will discuss each of these acts separately.

10. *Fraudulent conveyances*.—The first act is described as follows: "conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay or defraud his creditors, or any of them" (3, 1). The old bankruptcy statutes of England were designed chiefly to punish debtors who acted fraudulently in disposing of their property with the intention of injuring creditors. For many years the courts have been passing on situations involving fraud or alleged fraud, and we can glean from their discussions, therefore, the general rules of law which define fraud.<sup>3</sup>

11. *Preferences*.—The second act prevents certain creditors from getting advantages over the others. If a debtor is insolvent and transfers his property or a part of it to one or more creditors with intent to prefer such creditors over his other creditors he has committed the second act of bankruptcy (3, 2). Now, the words "prefer" and "preference" are frequently used in the Bankruptcy Act. Thus, we have occasion to use the word "preference" in two connections: first, to describe, as it is used here, an act of bankruptcy; second, to describe the kinds of transfers that will be set aside because they are injurious to the creditors as a class (57 and 60). Preferences, as the term is used in the

<sup>1</sup> Where there are less than twelve creditors one may sign the petition (59, b).

<sup>2</sup> The four months here referred to and mentioned frequently in the subsequent text means four calendar months. If an act of bankruptcy is committed on January 26, the last day to take advantage of it by filing a petition will be May 25.

<sup>3</sup> See Section 1 of the National Bankruptcy Act for definitions of some of the words used in describing this act of bankruptcy. For an account of fraudulent conveyances, see Wait's *Fraudulent Conveyances*, and the same title in Vol. 20 of the *Cyclopedia of Law and Procedure*.

second sense, are discussed at length later. It is sufficient here to say that generally whatever is said there about preferences applies here to preferences as acts of bankruptcy. But a voidable preference may be made without intent to prefer one creditor, while to prove the act of bankruptcy it is necessary to show that not only did the alleged bankrupt consent to the preference but that he intended it as a preference. To be sure, the mental state known as intent is quite impossible to prove except by the external acts committed or words said. For that reason it is generally held that if the necessary effect of a transfer is to give a preference, as where a debtor with a great many creditors transfers all his property to one creditor, the intent will be conclusively presumed.

12. *Preferences by legal proceedings.*—The third act is defined by the Act (3, 3), “suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference.”

Perhaps we ought to pause here to describe how debts are ordinarily collected. A owes B \$1,000 and refuses or is unable to pay the sum. B brings action against A by serving a summons and complaint on him, which summons and complaint requires A to come into court and say whether or not he owes the money. The result of the trial, we may assume, is a finding that A does owe the money and consequently a judgment is entered against A. This judgment, under the laws of most states, becomes a lien on all of A's property as soon as it is filed. Thus, if A owns a house with a first mortgage on it, this judgment becomes a second lien. An execution is then issued on the judgment, as prescribed by law, directing the sheriff or other proper officer to make a levy on A's property, that is, to seize so much of it as is necessary to pay the judgment debt.<sup>1</sup> The sheriff then advertises the property for sale and on the day prescribed it is

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<sup>1</sup> It should be noted that in most states the levy may be made before the action is tried. It is then called an attachment. Attachments are usually permitted if the debtor is accused of fraud or of intention to avoid the jurisdiction of the court. If the trial results in a judgment, the steps go forward as they are described above. If the plaintiff loses, however, he is compelled to return the property and the defendant may collect damages out of the bond which the plaintiff is required to put up at the outset.

sold. Out of the proceeds the judgment debt and all costs and fees of the trial and subsequent proceedings are paid.

This brief account is sufficiently complete to indicate the situation with which the third act of bankruptcy is intended to deal. If the property is permitted to be sold, just so much is taken from the insolvent's estate for the benefit of one creditor to the detriment of the others. The insolvent is given until within five days of the sale to pay off the debt or by some legal proceedings avoid the sale. If he permits things to go on to within the time allotted, the creditors may step in and prevent the sale by filing the bankruptcy petition.

13. *Assignments and receiverships.*—The purpose of the fourth act of bankruptcy is to prevent the debtor's escaping from the bankruptcy courts by seeking refuge in other means of settlement of his insolvent estate. It was common before the passage of the Bankruptcy Act for insolvent debtors to make an assignment to some trustee for the benefit of creditors. This had the effect of preventing the litigious creditors from grabbing the unfortunate debtor's property in attempts to pay their own debts in full. This very act of assignment is now made cause for action by the bankruptcy courts (3, 4).

Another method of obtaining practically the same result as that arising from an assignment is the receivership. A receiver is an impartial person appointed by a court of equity to hold property pending the termination of proceedings for establishing its ownership or proper disposition. If one creditor threatens to take all the property of an insolvent it may be turned over to the receiver under a court order instead of under the voluntary assignment. But here again, instead of being required to rely upon the receivership proceedings, the creditors may file a petition in bankruptcy and thus bring to their aid all the machinery provided by the Act.<sup>1</sup>

14. *Written admission as an act of bankruptcy.*—The alleged bankrupt may make an admission in writing of his inability to

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<sup>1</sup> Notice that receiverships do not always result in bankruptcy proceedings. If a debtor has plenty of property—more than the amount of his liabilities—but cannot pay his debts as they mature in the ordinary course of business because his funds are not liquid he may resort to a receivership to protect his property from the onslaughts of unbearing creditors who will be compelled by the receivership to wait till the property can be reduced to money. The receivership will not result in bankruptcy since it will not be possible to prove that the debtor is insolvent in the bankruptcy sense of the word.



pay his debts and his willingness to become a bankrupt. If this ground is relied upon to establish an act of bankruptcy the proceedings will be very similar to a voluntary bankruptcy. Indeed, before the Amendment of 1910, corporations were not permitted to go into voluntary bankruptcy, but they accomplished the same result by making a written admission and then procuring three friendly creditors to file the petition.

15. *Must the alleged bankrupt be insolvent?*—The petition, as we have seen, must state that the alleged bankrupt has committed one of the five acts of bankruptcy, within four months of the filing of the petition. Is it required always to prove the insolvency of the bankrupt? The Act says that the burden of proof is always on the alleged bankrupt to prove his solvency if the creditors are relying on the first act of bankruptcy (3, c). When the other acts are relied upon by the creditors the burden will be upon them to establish insolvency unless the debtor fails or refuses to come into court to answer the petition (3, d). The creditors, of course, make out a *prima facie* case showing that the debtor was insolvent and thus place the burden of rebuttal on the defendant. This burden, it must be evident, cannot possibly be borne successfully by the debtor if the acts of bankruptcy are a written admission of inability to pay debts and willingness to be declared a bankrupt, or the execution of a general assignment.

16. *What is insolvency?*—The law recognizes two forms of insolvency. Sometimes a man may have plenty of unliquid assets, but on account of the difficulty of turning them into cash, may find it impossible to pay his debts as they mature in the ordinary course of business. A hurried forced sale of the property with an attendant shrinkage of value would surely injure the debtor and might adversely affect the creditors' chances of a full settlement of their claims. To prevent such a situation the state courts may be relied upon for protection through a receivership. Such a receivership will not constitute an act of bankruptcy, for the act will not be committed if, as is the case assumed here, the debtor is not insolvent in the bankruptcy sense; that is, if his assets at a fair valuation are in excess of his liabilities.<sup>1</sup>

<sup>1</sup>The Bankruptcy Act provides (1, 15) "a person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts."

Without doubt, an insolvent person—one with assets less than his liabilities—can hardly escape the bankruptcy courts if his creditors are set upon bringing him into them. For one creditor may bring an action, take judgment and then open the door for the other creditors to allege the commission of the third act of bankruptcy.

17. *When is it necessary to prove intent?*—The present Bankruptcy Act cannot be said to be a criminal act, though a few of its provisions treat certain enumerated acts of wrong-doing as a crime. However, since it provides for the forcible taking of a man's property, it would seem that the intent of the debtor to injure his creditors would always be an important factor. Thus it is necessary in connection with the first and second acts of bankruptcy to prove intent to defraud or intent to prefer. The third act, however, does not require intent as an ingredient; merely passively allowing legal proceedings to proceed to sale constitutes the evil and injury to the creditors that the Bankruptcy Act seeks to avoid. And the same thing applies in the case of a receivership. The Act seeks to establish the supremacy of the bankruptcy courts, and whether other courts step in upon the solicitation of the debtor or upon the demand of some of his creditors is immaterial. Finally, it must be evident that in connection with assignments and written admissions of willingness to become a bankrupt the intent to oust the bankruptcy courts of control or the intent to injure creditors is immaterial. In these two cases it would hardly be the debtor who would object to the institution of bankruptcy proceedings.

18. *Provisional remedies pending involuntary bankruptcy.*—After the petition has been filed a period of fifteen days may elapse before the debtor is officially notified by the creditors as is required by law (18, a). The debtor then has five days in which to answer in a formal way the allegations contained in the petition (18, b). This is ample time for a fraudulent debtor to conceal property against the day of discharge or to transfer it secretly to near relatives or friends. But the Bankruptcy Act does not leave the creditors helpless. Certain provisional remedies are provided, and these may be so useful that we shall describe them separately.

19. *Seizure of alleged bankrupt's property.*—In the first place, the creditors may file proper papers and put up a bond and

then seize all of the property of the bankrupt which the bankrupt has in his own possession or which is in the possession of an agent or of one who does not deny the bankrupt's right to the property. This remedy, of course, may be used only where it is shown to the satisfaction of the court that there is danger of loss of the property to the injury of the estate (69). If the danger does arise, the United States marshal is given a writ to take summary possession. If the petition is not prosecuted or if, upon trial, it is not sustained but is dismissed, the defendant may proceed to collect all costs and damages of the seizure. It is to insure collection of any judgment he may obtain in a suit for this purpose that the creditors are required to put up the bond.

20. *Injunction.*—The Bankruptcy Act also provides that persons may be restrained from proceeding against the bankrupt in other courts in a way to interfere with the administration of the estate in the bankruptcy courts (11, a). Such restraining orders may be obtained at any time after the petition has been filed, and if there is any danger that the bankrupt will dispose of some of his property a special proceeding may be instituted for an injunction restraining him from disposing of his property before it can be taken over by the trustee subsequently to be chosen for the administration of the estate.

21. *Arrest and detention of the bankrupt.*—One of the great advantages of the Bankruptcy Act is the plenary power conferred on the administrators of the estate to get control of all the bankrupt's property for the benefit of the creditors. The act, moreover, imposes on the bankrupt the duty of aiding in the recovery of transferred or withheld property (7). If the bankrupt threatens to escape this duty by leaving the jurisdiction of the court the marshal may be directed to bring him before the court and if the allegations are found true and it appears necessary, the marshal may be directed "to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined or released or give bail conditioned for his appearance for examination" (9, b). Bankrupts may be extradited from the jurisdiction of one court to that of the court where the proceedings have been instituted (10).

22. *Receiverships.*—Where the property of the bankrupt consists of a going concern it is usual to petition immediately for the appointment of a receiver on the ground that immediate con-

trol of the property by the court is necessary to preserve the estate (2, 5). The receiver derives his powers from the order of the court and from subsequent orders. His chief duty is to preserve the estate, but of course he may sell perishable goods. Creditors should always insist upon the appointment of a capable person to act as receiver, and since the creditors are likely to know of persons familiar with the kind of business in which the debtor is engaged, their suggestions as to who should be appointed are usually favorably considered by the court.<sup>1</sup>

23. *Independent actions by creditors.*—In addition to the other provisional remedies, creditors may bring their own actions for the recovery of assets that may have been fraudulently transferred by the debtor. If the debtor is adjudicated a bankrupt, the trustee may continue the actions for the benefit of all creditors and if the goods are recovered, the creditor who began the action will be reimbursed for the expenses incurred (64, b, 2).

24. *Trial.*—Within fifteen days of the filing of the petition the bankrupt must be notified through service of a writ of subpoena (18, a). Provision is made for publication of the subpoena in case personal service is impossible. The bankrupt is then given five days in which to answer the allegation of the petition (18, b). He may deny any of the material charges, such as that he committed an act of bankruptcy, that he is insolvent or that the petitioning creditors are qualified under the Act. Generally, this answer is omitted, the debtor making no defense. In that event on the day following the last day for answer, a decree may be entered declaring the debtor a bankrupt (18, e). If the debtor does defend he may, under certain conditions, have a trial of the issues by a jury (19). The judge may refer the case to a master in chancery—an officer appointed to hear testimony—and upon his findings either declare the debtor a bankrupt or dismiss the petition.

25. *References.*—Immediately after the adjudication, the case is referred to a referee in bankruptcy (22). He is a quasi-judicial officer appointed by the court and handles the general routine of the bankruptcy proceedings (1, 7 and 33). The reader's attention is called to sections 34 to 43, inclusive, of the

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<sup>1</sup> The compensation of receivers has been fixed under the Bankruptcy Act amendments of 1910 (48, d and e.)

National Bankruptcy Act, which describe the duties, powers, jurisdiction and compensation of referees. Practically all matters after adjudication come before the referee, except applications for the confirmation of a composition and applications for final discharge of the bankrupt. These two questions must be taken up with the court.<sup>1</sup>

The referee is always subject to the superior power of the court which may at any time take the proceedings into its own hands (38).

26. *Notices to creditors.*—One of the important duties of the referee is to give notices to the creditors. The law provides specifically for notice in nine separate cases (58), the requirement being that ten days' notice shall be given, unless waived in writing, of

- (1) All examinations of the bankrupt;
- (2) All hearings upon applications for the confirmation of compositions;
- (3) All meetings of creditors;
- (4) All proposed sales of property;
- (5) The declaration and time of payment of dividends;
- (6) The filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon;
- (7) The proposed compromise of any controversy;
- (8) The proposed dismissal of the proceedings, and that
- (9) There shall be thirty days' notice of all applications for the discharge of bankrupts.

27. *Schedules.*—In order that the estate may be administered in an orderly way, the bankrupt is compelled to file a schedule of his property, and of the names and addresses of his creditors, the amount due them, a statement of the original consideration received by the bankrupt for their claims, and a statement of the security, if any, given by the bankrupt to secure such claims, as well as a statement of the claims made by the bankrupt of exemptions (7, a, 8).<sup>2</sup> These schedules are written on prescribed

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<sup>1</sup> Notice the use of the word "judge" in these sections instead of the usual word, "court."

<sup>2</sup> Exemptions are the rights of every individual granted by state laws to hold certain very necessary pieces of property, such as a small home-  
stead, farming or professional tools, household utensils, clothing and the like free from the right of seizure granted to creditors generally.

printed forms which may be obtained at any legal stationer's.<sup>1</sup>

In cases of voluntary bankruptcy the schedules must accompany the petition (7, a, 8), but in involuntary cases they must be filed within ten days after the adjudication (7, a, 8 and G. O. IX). Schedules must be sworn to. The referee or a creditor may file the schedules if the bankrupt neglects to do so and the referee may cause defective schedules to be amended (39, 2 and 6). It must be remembered that since debts not scheduled are not discharged (17, a, 3), it is in the interest of the bankrupt's future welfare to see that all debts are included. Even outlawed debts should be included, for the inclusion does not serve to revive them after they have been barred by the statute of limitations. Schedules are filed in triplicate, one for the clerk of court, one for the referee and one for the trustee (7, 8).

28. *Meetings of creditors.*—The referee is now in possession of the names of the creditors. He is required to call a meeting of the creditors not less than ten days nor more than thirty days after the decree in bankruptcy has been signed (55, a).

The referee, or the judge himself, if he so desires, presides over the first meeting, and before proceeding with any other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor (55, b). At this first meeting the creditors also elect a trustee (44, a).

Subsequent meetings of creditors are held from time to time, whenever the referee feels it is necessary, to carry out the purposes of the bankruptcy proceedings (55, a). A meeting must be called whenever one-fourth or more in number of those who have proven their claims file a written request to that effect (55, e). Moreover, a final meeting of creditors must be ordered whenever the affairs of the estate are ready to be closed (55, f).

The fact that creditors attend meetings does not indicate that they control the proceedings. The court and referee merely seek the advice of the creditors, but reserve the right to pass on points in dispute between the creditors and the bankrupt or among the creditors themselves. The creditors, however, find that the right to be heard at meetings is a valuable one; their suggestions as to the conduct of the estate are usually adopted by the trustee. Moreover, the right of creditors to have the debtor examined is

<sup>1</sup> See form printed after Form No. 1 and read (39, 2 and 6).

important, for wide latitude is permitted, and the information which creditors have of a bankrupt's affairs may be of great importance in directing the examination in such a way as to lead to disclosures of great moment. Not only may the bankrupt himself be examined, but also his wife, his assignee, his friends, and any one who might have the slightest information about any fraud committed by the bankrupt (21, a). These examinations frequently bring to light previously undiscovered assets of the bankrupt and thus serve to furnish evidence for suits intended to recover property and to enlarge the estate for the benefit of the creditors.

29. *Duties of bankrupt.*—Section 7 of the National Bankruptcy Act enumerates the duties of bankrupts. This section should be studied carefully at this point.

30. *Trustees.*—At the first meeting of creditors a trustee is selected by the creditors (44, a). The trustee gets title to the bankrupt's property, reduces it to possession, converts it into money and distributes the proceeds equitably among the creditors (47, a).

The trustee is elected on a per capita and a per dollar basis. If the two votes give a majority to the same candidate his election is usually confirmed by the referee, but in case of a disagreement the appointment of the candidate receiving the largest per capita is usually made, since he will represent the larger number of creditors and will not be open to the charge that he is favoring the few large creditors.

All legal actions brought against or by the estate are entitled in the name of the trustee. Before taking up the kinds of actions the trustee is likely to bring we must pause to consider the creditors. What are the qualifications of creditors that enable them to vote for the trustee and to participate in the other transactions?

31. *Creditors entitled to vote.*—The general purpose of the Bankruptcy Act is to give to the creditors who have no security or priority under the law the right to control the bankrupt's estate. Those creditors, therefore, who have security or who enjoy priority cannot vote *in respect to the secured or prior claims* unless they surrender their security or priority. If, on the other hand, they have common claims as well as the secured or prior claims, they may vote on the basis of those common

claims (56, b). And if the security is on the exempt property, the creditor may vote since he enjoys no benefit to the detriment of the general creditors.

Creditors may act through attorneys or proxies—not necessarily attorneys at law—by giving them sworn powers of attorney (Form No. 20). A creditor who holds several claims by assignment is entitled to one vote only, but an attorney may cast a separate vote for each creditor he represents.

32. *Filing claims.*—The right to vote is incidental merely to the administration of the estate. The final object of the creditor is to get his fair share of the bankrupt's estate when it is being distributed. It is very important, then, that each creditor present his claim in an orderly manner and that the question of whether a claim is entitled to share with others in the distribution of the estate be settled to the satisfaction of all parties or by competent judicial authority (57, a). The claims are made out on the official forms prescribed by the General Orders in Bankruptcy of the Supreme Court and are sworn to (Forms Nos. 31 to 36). The proof of claim, as the instrument is called, is filed with the referee, usually before the first meeting of creditors (G. O. XXI). Claims may not be filed subsequent to one year after the adjudication, or if they are determined by judgment rendered within thirty days before or after one year from the adjudication, then within sixty days after the judgment has been rendered (57, n). If a debt has been scheduled, but the proof of claim has not been filed within the period prescribed, the creditor loses all chance of recovering when the debtor is discharged in bankruptcy.

33. *Form and contents of proof of claim.*—Section 57 of the National Bankruptcy Act is one of the most important sections of the Act for the creditors of a bankrupt to study. It provides that "proof of claims shall consist of a statement under oath, in writing, signed by a creditor, setting forth the claim, the consideration therefor, and whether any, and if so what, securities are held therefor, and whether any, and, if so, what payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor."<sup>1</sup>

When claims are founded on instruments in writing the latter must be attached to the proof of claim. If the writing is

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<sup>1</sup> See Forms Nos. 31 to 36, inclusive.



lost or destroyed all the circumstances must be stated (57, b). After the claim is allowed a copy may be substituted for the original. Judgments obtained on claims should be described.

All items of indebtedness should be set out in detail. It is bad practice, and may lead to difficulty when the proof of claim is being considered for allowance, to lump items into an account stated. Even where a negotiable instrument is the basis of a claim, the consideration given for it should be stated.

Priority claims are filed in the same way as general claims, but it is usual to state the reasons why priority will be claimed under Section 64 of the Act.

34. *Who signs the proof of claim.*—The proof of claim must be signed and sworn to by the claimant himself except where, for good cause shown, an agent may verify the proof, in which latter case the affidavit must state clearly why the claimant cannot sign (G. O. XXI, 1). Partnership proofs are signed by one of the members of the firm and corporate proofs must be sworn to by the treasurer, or if there be none, by the person performing the duties generally assigned to him (G. O. XXI, 1). Whoever signs for the corporation should merely sign his own name and give his individual oath. The oath may be taken by a referee or any officer, such as a notary public or a commissioner of deeds, empowered by the federal courts or state laws to administer oaths.

35. *Assignments of claims.*—Claims may be assigned at any time.<sup>1</sup> If the assignment takes place before the petition is filed, the assignee executes the proof of claim in his own name. If the assignment takes place before the proof is filed but after the bankruptcy proceedings have been begun, the assignee's affidavit must be accompanied by one from the original owner who must state the true consideration received and describe the security, if any (G. O. XXI, 3). Filed claims may be assigned by filing the assignment, but the referee is bound to give the original claimant ten days in which to deny the validity of the assignment (G. O. XXI, 3).

36. *Interest on claims.*—Where a claim is entitled to interest the amount should be computed by the claimant and included

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<sup>1</sup> Claims for damages in tort cases, of course, generally cannot be assigned though a judgment recovered on such claim may be assigned. The judgment turns the tort claim into a contract claim.

in the proof of claim, else the interest may not be allowed. Interest stops at the date of filing the petition and if a claim is due after this date, interest from the date of filing the petition to the due date of the claim must be subtracted from the amount of the claim (63, a, 1).

37. *Proof of claim by contingent creditors.*—Suppose a person has endorsed the bankrupt's note. His liability is secondary to that of the bankrupt. In all of such cases, whether the contingent liability be that of surety, guarantor or endorser, the person secondarily or contingently liable may prove the debt in the name of the creditor, if the latter himself does not present and prove the claim, and if the creditor is unknown then he may prove it in his own name (G. O. XXI, 4).

38. *Valid, provable and allowable claims.*—Before a creditor may participate in any of the bankruptcy transactions, except to examine the bankrupt as an aid in proving his claim, the claim must be shown to be valid, must be proved and allowed (56). Since frequently there is confusion as to the meaning of these terms it may be well to consider them separately.

39. *Valid claims.*—A claim has no standing at all unless it is valid under the general rules of law. Claims barred by the statute of limitations are not valid. Again a claim may be made without foundation in law, as, for example, where a claim is made against a father for some wrong-doing of his son.

40. *Provable claims.*—Granted that a claim is valid, that is, that a judgment could be recovered on it in an ordinary suit at law, for that, after all, is the true test of validity; may the claim be proved? The answer to that question depends entirely on the Bankruptcy Act, for that act states what claims may be proved (63). The general purpose of the Act is to deal with debts arising in the ordinary course of business. These include all contract debts, taxes and the like. Unliquidated contract claims, such as those of a debtor or lawyer for service, may be proved, but the exact amount must be fixed before the claim can be allowed. Liquidation takes place in such manner as the court may direct (63, b). Claims arising before, but payable after the petition is filed, are provable. Claims wholly arising after adjudication are not affected in any way by the bankruptcy proceedings and therefore are not provable.

Tort claims, such as those for negligence, slander or trespass,

are not provable. If a claim sounds both in contract and in tort and the claimant has the right of election he may, of course, claim under contract and prove his claim. Such torts are those that result in the unjust enrichment of the tortfeasor. An example is conversion of goods, where the plaintiff may sue in tort for all damages sustained or may sue in assumpsit, that is, for breach of the contract expressed or implied to return the goods to the rightful owner.

It is generally held that rent due or accrued before the petition is filed is provable; rent due after the petition is filed may not be used as a claim against the estate unless the trustee elects to treat the lease as an asset of the estate.

However, as we shall see, judgments recovered against the bankrupt for fraud or deceit are not barred by the discharge of the bankrupt (17, 4), and the claims arising therefrom are provable. If the dividends received by the creditor are insufficient to pay these debts, the creditor may collect the deficiency after the discharge of the bankrupt.

Damages for breach of contract of sale or employment are provable claims, if they may be made the basis of an action before the petition is filed.

In actions where the bankrupt was a plaintiff and the trustee refuses to continue the case, the costs may be proved against the estate. And the costs of actions brought in good faith by a creditor to recover a provable debt and taxed before the filing of the petition are provable.

41. *Allowable claims.*—The creditor, we may now assume, has jumped two hurdles; he has established the validity of his claim and he has proved it. It now remains to have the claim allowed (57, d). Certain forms of provable claims will not be allowed by the referee. In every instance where claims are brought forward to be proved, objections may be made against their allowance, and the law provides (57, f) that the objections shall be heard and determined as soon as the convenience of the court and the best interests of the estate and of the claimants will permit. There are two classes of provable claims that the referee will not allow. Secured claims will be allowed only to the extent of the difference between the amount of the claim and the value of the bankrupt's property securing the claim<sup>1</sup> (57, e). If, in

<sup>1</sup> As to method of determining the value of securities, see National Bankruptcy Act (57, h).

proving his claim, the creditor fails to mention the security he will be deemed to have elected to prove his claim as unsecured. But the court has power to permit the creditor to amend his proof. The second class of provable claims that will not be allowed is considered in the next section.

42. *Claims of creditors who have received a preference.*—Where a bankrupt, within four months of the filing of the petition and while insolvent, transfers any of his property to pay a debt theretofore incurred, the creditor receiving the transfer has been preferred. As we shall see later, if it can be established that the creditor knew he was being preferred, he may be compelled by the trustee to surrender the preference and his claim will not be allowed till he has surrendered the preference (57, j). If he does this willingly or unwillingly his claim may then be allowed.

The law provides that claims that have been allowed may be reconsidered for good cause and may be reallocated or may be rejected in whole or in part (57, k).

43. *The bankrupt's property which will pass to the trustee.*—Section 70 of the National Bankruptcy Act describes the property which will pass to the trustee for the benefit of the creditors.

(1) Documents relating to his property. Notice that this gives the trustee title and control of all the bankrupt's books and other documents and not merely the right to inspect them.

(2) Interests in patents, patent rights, copyrights, and trade marks. The trustee gets title to patents which have been granted but not to rights in patents applied for.

(3) Powers which the bankrupt might have exercised for his own benefit, but not those which he might have exercised for some other person. Thus if the bankrupt has the right to nominate who shall take A's property upon the death of B, the trustee does not get the power to make the nomination.

(4) Property transferred by the bankrupt in fraud of creditors. This applies to all property thus transferred, whether within the four months period or not. The trustee merely brings an appropriate action to recover the property or its value from any one who has received it. But the equitable rule, that a bona fide purchaser of the property who has no notice of the fraud gets an untainted title, holds good here.

(5) Property which, prior to the filing of the petition, the bankrupt could by any means have transferred or which might have been levied upon and sold under judicial process as the bankrupt's. This is the last and broadest class of property right passing to the trustee. It includes property which ordinarily is not saleable as, for example, a seat in the stock exchange. Unpaid stock subscriptions of a bankrupt corporation belong to the trustee, and he may issue the call and then bring an action for them. Inchoate rights such as those of dower or curtesy do not pass.

(6) Rights of action arising upon contract or from the unlawful taking or detention of, or injury to, the bankrupt's property. This does not include rights of action for injury to the person of the bankrupt, such as rights growing out of personal injuries, slander or libel.

44. *Leaseholds*.—The bankruptcy of a tenant does not necessarily terminate a lease. Nor does the bankruptcy of the landlord. In the latter case, the right to collect rents passes to the trustee. The trustee of a tenant has a reasonable time to decide whether he will accept or reject the lease. If he rejects the lease the estate will not be liable for rent, but merely for the reasonable value of the occupation while the trustee is deciding.

45. *Life insurance policies*.—What title does the trustee get to the bankrupt's insurance policy? Section 70 provides "that when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets." It has been held by the courts that the trustee gets the title to any policy which the bankrupt held absolutely, contingently or conditionally, subject to this right of redemption vested by the Bankruptcy Act in the bankrupt and subject to the exemption laws of the several states. Thus if a policy made out to the bankrupt's wife gives the bankrupt the right to change the beneficiary, the trustee will get the title to the policy and the bank-

rupt may be compelled to execute such assignments as may be necessary. It has been held that the trustee may pay premiums out of the estate in order to preserve policies for the benefit of the estate.

46. *Exemptions.*—The Bankruptcy Act gives the bankrupt the personal right to claim the exemption to which he is entitled by the state laws (6). As to such property, if the exemption is allowed by the court, title does not pass to the trustee, though he is entitled to take possession and to hold it a reasonable time to determine what part of the entire property shall be set aside as exempt (47, a, 61). What property is exempt is to be determined as of the time of the adjudication. Thus if a larger exemption is given for a married man than for a bachelor, the marriage of the bachelor before the adjudication but after the filing of the petition will entitle him to the larger exemption. Exemption may be waived.

47. *Property in foreign lands.*—Since the United States courts have jurisdiction only within the territory of the United States, property in foreign lands will not automatically be vested in the trustee by virtue of an adjudication in bankruptcy. But to overcome this difficulty, the Bankruptcy Act provides (7, 5) that the bankrupt may be compelled to execute to his trustee transfers of all his property in foreign countries.

48. *When title is transferred.*—Since the trustee is not appointed till after the adjudication, title to the bankrupt's property vests in the trustee when he qualifies but then relates back to the date of adjudication. Between the date of the filing of the petition and the adjudication the property belongs to the bankrupt to the extent that he may protect it generally. The bankrupt may use it as he sees fit, except that he may not give it away nor use it to give preferences. Since suits against the bankrupt are stayed by virtue of the filing of a certificate, liens cannot be acquired through legal proceedings after the filing of the petition.<sup>1</sup>

<sup>1</sup> Under the Bankruptcy Act of 1867 the title of the trustee related back to the filing of the petition. If, under that law, a petition was filed against a business man it drove him out of business, since any dealings had in his property after the filing of a certificate were void, since the title to the property might subsequently be determined to have been not in the bankrupt but in the trustee. The law of 1898 avoids this difficulty by leaving the dominion over the property in the hands of the bankrupt till adjudication. Moreover, the creditors are protected by section 69, which gives the creditors the right to have the property seized by a marshal if necessary. That officer is given limited power to continue and to conduct the business.

49. *Title to property acquired by bankrupt after filing of the petition.*—If, after the filing of the petition and the final adjudication, the bankrupt purchase property with the proceeds of other property owned by him at the time of the filing, such new property will pass to the trustee, since the original property belonged to the creditors, and whatever was bought with it in equity belongs to the creditors. If, however, the new property was bought on credit after the filing of the petition, it will belong to the bankrupt, and his debt thereon will not be provable by the creditor nor will it be discharged. If the new property was paid for partly with the bankrupt's property and partly with his credit, the creditors will have a lien on the property to the extent of the value of the property or money used in purchasing the new property. Property acquired by way of gift after the filing of the petition belongs wholly to the bankrupt. All of these rules can be worked out from a careful reading of Section 70 of the Act and especially of clause 5.

Property acquired after the adjudication, of course, belongs to the bankrupt.

50. *Nature of trustee's interest in bankrupt's property.*—The subject of the nature of the trustee's title is of great importance. Unfortunately it is somewhat shrouded in legal technicalities, and the average business man, even the credit man who is most apt to desire information along this line, will find the subject difficult to grasp. A simple exposition of the subject, we believe, is possible, and the earnest reader should find it a not insuperable obstacle to a complete understanding of the law.<sup>1</sup>

The general rule is that the trustee stands in the bankrupt's shoes, and therefore takes whatever title the bankrupt had. To this must be added the rule that the trustee represents the creditors and also has whatever rights they would have, had there been no bankruptcy law. If, then, the bankrupt, without committing fraud and before the beginning of the four months period, has given valid and binding liens which would ordinarily be valid as against subsequent creditors, the trustee takes the property subject to such liens.

But the bankruptcy law mentions several exceptions to this rule and we shall take these exceptions up separately.

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<sup>1</sup> The reader is urged to make a specially careful study of the problems proposed in Part IV of this book bearing on this part of the text. See Problems in Section VII.

51. *Voidable preferences.*—The trustee may get a better interest than the bankrupt had by virtue of Section 60 of the National Bankruptcy Act giving the trustee the right to set aside preferences. If the bankrupt were solvent or insolvent and had transferred his property to pay a debt he owed or had permitted a judgment to be entered, certainly he would have to abide by the results of his acts as they affected the title to his property. But the trustee will not be bound by these acts if they constitute preferences described by the Bankruptcy Act. First determine whether a bankrupt has preferred one of his creditors,<sup>1</sup> and then it will be clear that under Section 60, b, of the National Bankruptcy Act, the trustee will have rights to the property affected by the preference greater than the bankrupt himself had before the adjudication.

52. *Dissolution of liens secured by legal proceedings.*—The second exception to the rule that the trustee stands in the bankrupt's shoes in respect to the title to the bankrupt's property is provided by Section 67, clause f, of the National Bankruptcy Act, which provides that all liens secured by legal proceedings upon the property of the bankrupt within four months of the filing of the petition are dissolved if at the time the lien was secured the bankrupt was insolvent.<sup>2</sup>

53. *Secret liens avoided.*—Under the Act as it stood previous to the Amendment of 1910 it was possible to have a situation like this. A gave a mortgage to B five years before A became bankrupt. B never recorded his mortgage. Now this mortgage ordinarily would be good as against anybody who knew about it, and of course would be binding on A. But if B could assert his claim against A's property as a prior claim to that of the creditors who all along had given credit to A on the supposition that his property was unencumbered, the creditors would be injured—for the benefit or advantage of B, who, fraudulently or not fraudulently, was a party to the transaction and who could have protected his own rights by recording the mortgage; at the same time, by giving the world constructive notice of his lien, B would have enabled the creditors to judge fairly of A's

<sup>1</sup> Read carefully Section 60, clause a of the Act.

<sup>2</sup> Notice that Section 67, f, seems to be opposed and antagonistic to clause c of the same section, where it is said that the creditors must have had knowledge of the insolvency or cause to believe the bankrupt was insolvent. Clause f is broader and has been held by the courts to govern.



credit standing. It would seem fair that in a situation like this another exception should be made to the general rule that the trustee stands in the bankrupt's shoes in respect to the title to property of the bankrupt. For if the trustee must stand aside and permit B to assert his unrecorded lien, the creditors will be injured. Under the law as it stood prior to 1910 such injury was, indeed, often worked upon the creditors. But the difficulty has been remedied by part (2) of clause a, Section 47, and the trustee is now empowered generally to protect the creditors.

54. *Fraudulent transfers*.—Another exception to the rule that the trustee stands in the bankrupt's shoes in respect to the title to the latter's property is that arising out of the rule that the trustee may avoid fraudulent transfers (70, a, and 70, e). Under these provisions of the Act fraudulent transfers may be set aside even if they occurred before the four months period. The fact is that the fraudulent acts here referred to were made fraudulent by an old statute passed in the reign of Queen Elizabeth and generally accepted or re-enacted in the States of the Union.<sup>1</sup> But to set aside such old transfers as occurred before the four months period it must be shown that the transferee participated in the fraudulent intent.

Under Section 67, e, any transfer or placing of incumbrance within four months of the filing of the petition with the intent and purpose to hinder, delay or defraud the creditors in the enforcement of their rights is void.

55. *Set-offs*.—In connection with voidable preferences and voidable transfers it is wise to consider the subject of set-offs and counter-claims mentioned in Section 68 of the Act. "In all cases of mutual debts or mutual credits between the estate and a bankrupt and a creditor, the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid." Under this rule a debt payable in the future may be set off against one payable at present. To be sure, this applies only to the time of payment. Debts which did not arise at all before the filing of the petition cannot be used against each other or against those that did arise before such date. A separate debt cannot be set off against a joint debt unless they have grown out of circumstances establishing that a joint credit had been given on account of a separate debt. And a debt due

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<sup>1</sup> Problems in Part IV, Section IV, a.

to a person as guardian or trustee cannot be set off against a debt owing by him individually. And since unpaid subscriptions to the capital stock of a company are generally regarded as impressed with a trust for the benefit of the company's creditors, it has been held that a creditor cannot prove his claim against a bankrupt corporation till he has fully paid his subscription. Moreover, where the same persons are members of separate firms doing business under different names, a person cannot use a credit with one firm against a debt due to the other unless he knew the firms consisted of the same persons and had dealt with them generally on that basis.

A claim to be used as a set-off must be a provable debt and may be used although it has not been proved.

Claims bought for the purpose of set-off will not be allowed to be used for that purpose (68, b).

If a creditor has been preferred and afterwards gives the debtor further credit in good faith without security of any kind, for property which becomes a part of the debtor's estate, the amount of such new credit unpaid at the time of the adjudication in bankruptcy may be used as a set-off against the amount which otherwise would be due from the creditor (60, c).

56. *Rights of trustee in managing the bankrupt estate.*—The trustee has the same power to protect the bankrupt's estate as the bankrupt would have if he had remained solvent. He may continue suits brought by the bankrupt, and may defend suits brought against him (11, b and c). He may plead the statute of limitations or the statute of frauds, or illegality of contracts, or usury; he may plead payment, or accord and satisfaction. He may redeem mortgaged property (G. O. XXVIII) and generally do all such things as the bankrupt might do.

57. *Duties of trustee.*—The trustee is absolute owner of the property passed to him by virtue of the Bankruptcy Act. He must reduce his ownership to possession and must defend his rights. He must account for interest paid to him (47, a, 1) and while the Bankruptcy Act does not provide for temporary investment of the funds received, he would be liable for interest on any considerable sum of money collected by him and not deposited within a reasonable time without good cause. In fact, he has all the duties prescribed by Section 47 of the National Bankruptcy Act, which the reader is urged to study. He must

collect the property and close up the estate; deposit moneys in an appointed depository (61) and disburse moneys only by check or draft (G. O. XXIX); he must furnish information when requested by parties in interest, must keep regular accounts and must at the very outset prepare an inventory, make regular reports to the court as provided by the statute, and prepare and file with the court within fifteen days of the final meeting of creditors a final report;<sup>1</sup> he must pay dividends and set aside the bankrupt's exemptions.<sup>2</sup>

58. *Appraisal of Assets.*—In order to give the creditors a fair idea of what the assets ought to bring when sold, three appraisers are appointed (70, b). If the appointment is necessary before the adjudication, the judge makes the appointment—otherwise the referee selects the appraisers. Business men acquainted with values in the business should be selected; their oaths compel them to act impartially and to give an unbiased opinion (See Form No. 13). The appraisers, indeed, should not be related in any way to any of the parties, else their appraisal may be suspected of being unduly influenced. Each piece of property must be appraised by three appraisers, though where property is located in different places or may be grouped into lots of very dissimilar character each lot need not be appraised by the same three men who appraise the other lots. All questions bearing on value should be taken into account, such as the quality, kind and style of the stock, the season, the general demand and the availability of the goods to fill the ordinary demands made for similar goods. Appraisals need not be made firm, but may be made in the alternative, as, for example, one sum for piece-meal sale and another for bulk, or one sum for the property and another if the property is taken together with the business as a going concern. Appraisers must file their report with the court.

59. *Conversion of assets into cash.*—The trustee is required to return the assets into cash for easier distribution to the creditors. The sale may be made before adjudication, if necessary, to preserve the estate, but ordinarily ten days' notice must be given to all creditors scheduled or who have filed claims. The sale must be public unless the court gives permission for a pri-

<sup>1</sup> See Forms 49 and 50.

<sup>2</sup> Read besides Sections 47 and 70 of the National Bankruptcy Act, General Orders No. XVII.

ivate sale. The trustee conveys title to the purchaser, but the sale is not complete till confirmed by the court. For any irregularity the sale may be set aside. It is probable that if deferred payments are properly secured and they do not unduly prolong the winding up of the estate they may, in a proper case, be accepted in lieu of cash (70, b and c; G. O. XVIII).

The trustee is not required to take charge of or to sell property that is so heavily encumbered with valid liens that the sale can realize nothing for the unsecured creditors. The court or referee may order property sold free from liens, the liens being transferred from the property itself to the proceeds of the sale, but this should be done only when it appears that by so doing the creditors will gain.

While the bankrupt may be a bidder at the sale, neither the trustee, the receiver, the referee nor the appraiser may bid.

The rules pertaining to the sale of property should be carefully followed in order to convey clear title to the purchaser, especially in the case of real estate.

60. *Discovery of assets.*—One of the great advantages of the present Bankruptcy Act is that it gives the creditors ample means to discover the bankrupt's assets. The examination is generally conducted by the trustee, but the creditors may participate, and frequently the examination is begun before the trustee is elected or even before adjudication. The examination provided for in Section 7, clause 9, and in Section 21, may be made very searching. Moreover, the court may direct "any person" to come in and give evidence. The examination is conducted in a more unrestricted way than is the examination of witnesses in an ordinary jury trial. The witnesses may be required to bring papers and documents necessary to throw light on the subjects under inquiry. Frequently evidence is brought out which may be used in subsequent suits intended to set aside transfers or in other ways to collect and conserve the estate's property.

61. *Distribution of the estate.*—As we saw at the outset, one of the purposes of the Bankruptcy Act is to distribute the bankrupt's property among his creditors. The Act divides creditors into different classes and says that each class shall be paid in full before the next class may participate (64). If any class cannot be paid in full, the amount available for that class is

divided among the creditors in proportion to their claims. The first claims to be paid are the costs of administering the bankrupt estate (64, b); then come taxes (64, a)<sup>1</sup>, and then wages, then priorities provided by the state laws and finally the general creditors. Priorities generally are determined from the nature of the transaction originating the claim and are usually not lost by conversion into a judgment or a note or by assignment.

62. *Costs of administering the estate.*—Section 64, b, states how the costs and expenses are to be paid. First comes the actual and necessary cost of preserving the property; then the filing fees of petitioning creditors and the expenses of the creditors in a successful suit to recover the bankrupt's property for the benefit of the estate; finally come the "cost of administration," which includes the fees of all the officers involved in the regular proceedings and the costs and expenses they have properly incurred for the benefit of the estate. Creditors and the bankrupt can ask for reimbursement for the fees of one attorney each only. The schedule of officers' fees is fixed by the Act and it is provided in Section 72 "that neither the referee, receiver, marshal nor trustee shall in any form or guise receive, nor shall the court allow him, any other or further compensation for his services than that expressly authorized and prescribed in this Act."

63. *Taxes.*—The state, of course, is not required to file a proof of claim for taxes. It is the duty of the trustee to make a search for all taxes of every kind and description and to pay them even if they exhaust the estate and even if the property on which they were levied does not become a part of the estate. If a person who has a claim against any of the property pays the taxes to protect his interest in the property he will be subrogated to the position of the state and will have the same claim in respect thereto in the distribution of the estate as the state would have had if the taxes had remained unpaid.

64. *Wages due to workmen, clerks, travelling or city salesmen or servants.*—The claims of these people constitute the next class given priority by the act. No claim may exceed three hundred dollars, and no claim will be entered unless earned within three

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<sup>1</sup> Notice that the statute says that taxes shall be paid "in advance of the payment of dividends to creditors." Costs are not dividends to creditors.

months before the date of the commencement of proceedings. Frequently difficulty arises as to whether a person falls within one of the groups of employees enumerated. These words must be applied as they are generally used in every-day speech; the nature of the employee's services rendered will determine his status.

65. *Priorities under laws of the states or of the United States.*—Such debts are likely to be priorities for rent due, for debts due to beneficiaries under a trust in which the bankrupt was trustee, debts due for furnishing materials for manufacturing concerns and the like. The purpose of the Act is to give as much effect as possible to those state and federal laws which impliedly were in the minds of the bankrupt and his creditors when they entered into their contractual relations. Where priority is given both by state laws and by the Bankruptcy Act, the latter governs.

66. *General creditors.*—If anything is left after paying the priority creditors in full, it is divided among the general creditors in proportion to their claims. If, as may possibly happen, the estate realizes more than all claims, the surplus goes to the bankrupt (66, b).

67. *Dividends, how paid.*—Written notice must be given the creditors at least ten days before the declaration and payment of dividends. The times at which and the manner in which dividends shall be paid are regulated by Section 65 of the National Bankruptcy Act, the provisions of which should be read carefully.

Dividends unclaimed for six months must be paid into court, and when unclaimed for a year go to the creditors whose claims have been allowed but have not been paid in full (66).

68. *Compositions.*—A beneficent feature of the Bankruptcy Act is the provision for composition, by which is meant that under the rules laid down an agreement may be made whereby, upon payment of a stipulated sum, the bankrupt may redeem his property, the case may be dismissed and the bankrupt discharged from his debts (12). Such a composition not only saves trouble and time in the administration of the estate but saves expense, since some of the officers' fees are cut in half (40, a, and 48, a and e).

Under the Amendment of 1910, compositions may take place after the petition has been filed and even before adjudication.

In any event, the bankrupt cannot offer terms of composition before he has been examined in open court by his creditors, and has filed his schedules (12). They must be given an opportunity to find out whether the terms of composition offered are fair considering the probable size of the estate, the probable difficulty of administering it and the cost of collecting and selling the property and of distributing the proceeds.<sup>1</sup>

Ten days' notice in writing is given to all creditors of a special meeting to be held for the purpose of presenting the compositions. If the offer is accepted by a majority in number and amount of creditors a petition is filed for the confirmations of the composition by the court.<sup>2</sup> The bankrupt must also deposit sufficient money to pay the costs and the priority claims as well as the consideration—which may be money or other valuable thing agreed upon—in the regularly designated depository. Ten days' notice by mail, unless waived, must be given to all creditors of the hearing on the petition.

69. *Opposition to confirmation of composition.*—Three grounds are specified in the Act for opposition to the confirmation of the composition (12, d). Any of these grounds may be set up by any creditor as an objection to the confirmation of the composition if he enters his appearance on the day set for the hearing and thereafter within ten days files a written statement of the grounds of his objection (G. O. XXXII). If it can be shown that more would likely be obtained by the creditors if the estate were regularly administered, the court may deny confirmation (12, d, 1). Since confirmation entails the discharge of the bankrupt from his debts, the petition will be denied if the bankrupt has committed an act which bars him from discharge (12, d, 2). Finally, if there has been any fraud, such as connivance between favored creditors and the bankrupt—that is, if it can be shown that the composition was not made in good faith—the judge may deny the petition (12, d, 3). If the petition is denied, the proceedings go forward as if the application had never been made. If the petition is granted (70, f) an order is entered confirming the composition and another order is also entered directing the distribution of the moneys and consideration deposited (Forms

<sup>1</sup> Read carefully Section 12 and study forms 60-63, inclusive.

<sup>2</sup> The "court" in this case means the judge, not the referee (G. O. XII, 3.)

62 and 63). Confirmation may be set aside by the court for fraud at any time within six months (13).

70. *Closing of estate.*—If the composition is confirmed all proceedings are at an end. If, however, there has been no composition, but the case has progressed through to distribution of the estate in dividends to the general creditors, certain formalities are necessary to wind up the administration. After the trustee has closed up all litigation and has distributed all the dividends exhausting the estate and has paid the necessary expenses, he files his final report (47, a, 8). The creditors are given ten days' notice of the final meeting, the report is approved and the trustee is discharged. The referee then certifies to the report and sends it to the District Court. The court may reopen closed cases where it appears that the administration has not been complete (2, 8). While no time is set for an application to reopen a case, it should be made with due diligence.

71. *Crimes and contempts.*—Certain acts are made crimes by the Bankruptcy Act, and the court is given power to punish certain acts of omission or commission as contempt of court. It is sufficient here to call attention to Sections 29 and 41, a.

72. *Discharge of bankrupt.*—From the bankrupt's standpoint the most important part of the bankruptcy proceedings is the discharge. Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court in which the bankruptcy proceedings are pending (14). The court has power to extend the period six months (14, a). Unless the bankrupt has committed one of the prohibited acts mentioned in Section 14, b, he will be discharged from further liability on all debts except those which, under the terms of the Act, are not affected by a discharge (17).

The acts which prevent a discharge are enumerated as follows (14 b):

The application for a discharge shall be granted unless the bankrupt has

1. Committed an offense punishable by imprisonment as provided herein (29).

2. With intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which such conditions might be ascertained.



3. Obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person.

4. At any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property, with intent to hinder, delay, or defraud his creditors.

5. In voluntary proceedings been granted a discharge in bankruptcy within six years.

6. In the course of the proceedings in bankruptcy refused to obey any lawful order of, or to answer any material question approved by, the court.

All parties in interest, including all creditors and the trustee, are given a hearing, at which time the court will give the trustee or parties interested a reasonable opportunity to be fully heard, and will investigate the merits of the application (G. O. XXXII).

Unless the prohibited acts are proven against the bankrupt he must be discharged; the Act leaves the court no discretion.

At any time within a year the discharge may be revoked for fraud unknown to the creditors at the time but learned of by them in the meantime (15).

73. *Effect of discharge.*—The discharge bars collection of all provable debts scheduled. It has no effect on any relations except those arising out of such debts. The discharge, for example, does not dissolve the relation of landlord and tenant. Certain debts are not affected, however, and these are enumerated in Section 17. They include taxes; liabilities for obtaining property by false pretences or false representation, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation; debts which have not been scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy, and debts created by fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity. Any of the

debts of the bankrupt in this list remain an obligation of the bankrupt, and the holder of such claim may proceed against the bankrupt as though the bankruptcy proceedings had never taken place.

Discharge in bankruptcy is a personal defense and does not help the bankrupt in an action on a barred debt unless it is pleaded by the bankrupt.

74. *Partnerships may be adjudged bankrupts.*—Partnerships arising out of expressed contract may become voluntary and involuntary bankrupts (5, a). They are deemed to continue to exist for this purpose till their affairs are all settled up. In determining whether a partnership is insolvent, the excess of the individual partners' assets over their individual indebtedness must be deemed an asset of the firm. Generally, partners' separate estates are brought into the administration in bankruptcy of the firm property.

75. *Who may sign the petition.*—In voluntary cases the petition may be signed by any one partner even against the opposition of the other members, who, of course, are permitted to defend the petition on the ground that the firm is not insolvent (G. O. VIII). As to the defending partners, the proceeding is considered an involuntary bankruptcy, hence they must receive notice (see Form No. 2).

While a creditor of the firm, being also a creditor of the member, may join as a creditor in petitioning an individual member into bankruptcy, it is doubtful whether the creditor of an individual member can join in the petition for the firm's bankruptcy. Under the Act, at any rate (5, h), partnership property cannot be administered in the bankruptcy proceedings involving only one of the firm members without the consent of the solvent members. If the solvent members do not consent, the trustee, in the individual case, can merely demand an accounting to reach the insolvent's share in the partnership property.

In actions against the partnership, the individual members may be declared bankrupts if insolvent and if they have joined in committing the act of bankruptcy or have individually committed an act of bankruptcy.

76. *Schedules in partnership cases.*—Since it is necessary to determine the solvency of the firm by adding to the assets the surplus assets of the several creditors, it is necessary for part-

ners to file schedules of their debts and assets, even though they are resisting the petition (G. O. VIII).

77. *Trustee of partnership.*—The trustee is elected by the partnership creditors in the same manner as is the trustee of an individual (5, b). Creditors of individuals have no right to vote.

78. *Marshaling assets.*—The law gives the court power to marshal the assets, that is, to arrange and apportion them among all the creditors involved so that equity will result. Some of the rules that have been evolved may be reviewed briefly.

If one member fraudulently transfers his interest in the firm to another partner, and the partners and the partnership are adjudged bankrupts, the property will be marshaled between firm and individual creditors as though no transfer had taken place.

If a bankrupt is a member of two firms, the property of each firm must be so marshaled that the creditors of each firm shall be paid from the property of the firm of which they are respectively the creditors. But if there is a surplus after paying the individual debts, it must be distributed ratably among all the creditors who have proved their claims and to whom the bankrupt partner was liable either in a bankrupt firm or any other firm. If the same partners conduct business in different places and under different firm names, the firms will be treated as one, and no notice will be taken of claims of one firm against another.

79. *Distribution to individual and partnership creditors.*—The general rule of distribution is that stated in the Bankruptcy Act, Section 59. Firm creditors may prove their claims against the individual estates and individual creditors may prove their claims against the firm estate. And it has been held that if a firm is dissolved, having no assets, and afterwards the members of that firm form a new one, which becomes bankrupt, a creditor of the old firm is to be deemed a creditor of the new firm.

Firm creditors have a first share in firm assets and then a share in the surplus of members' assets, and, *vice versa*, individuals have the first share in the individual assets of their respective debtors and then share in the firm assets if there be any surplus after paying the firm creditors (5, f).

What assets belong to the individuals and what to the firm, and who are firm creditors and who individual creditors, are

questions to be decided after a consideration of all the facts as they point to the intentions of the parties. Although some of the older decided cases held that firm creditors might share with individual creditors when there was no living solvent partner and the firm was entirely without assets, the prevailing rule is that individual creditors share alone in the individual estate.

Where a creditor holds the joint obligation of a firm, secured by the individual obligation of one or more members, he may prove his claim against both the firm and the individual estates. The creditor does not have to give up the security of the separate obligations, but may receive a dividend from both estates as long as he does not obtain more than the full amount of his claim.

80. *Liens and preferences.*—The rule stated as to liens and preferences in the case of individual bankruptcies applies here. But liens and preferences given by the partnership or by the individual are not affected if the one giving the lien or preference is not bankrupt. For this purpose partnerships are to be considered as separate and distinct entities.

81. *Costs in bankruptcy cases.*—The law provides that the expenses of administering the properties may be apportioned against the different estates as the court may determine (5, e). If a partnership is declared bankrupt, as we have seen, the individual properties are generally brought in for administration, but the partnership creditors elect the trustee, who, by virtue of his election, takes charge of the individual estates. The trustee, however, is required to keep separate accounts of the partnership and of the individual property, and it is but just that the expenses be apportioned equitably in view of all the difficulties in administering the respective estates.

# THE LAW OF BANKRUPTCY

## PART II: BANKRUPTCY ACT AND GENERAL ORDERS

ACT OF JULY 1, 1898, c. 541.

[30 *Statutes at Large*, 544.]

AN ACT, TO ESTABLISH A UNIFORM SYSTEM OF BANKRUPTCY  
THROUGHOUT THE UNITED STATES.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled:*

### I. DEFINITIONS

SECTION 1. MEANING OF WORDS AND PHRASES.—*a.* The words and phrases used in this Act, and in proceedings pursuant thereto, shall, unless the same be inconsistent with the context, be construed as follows: (1) “A person against whom a petition has been filed” shall include a person who has filed a voluntary petition; (2) “adjudication” shall mean the date of the entry of a decree that the defendant, in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed; (3) “appellate courts” shall include the circuit courts of appeals of the United States, the supreme courts of the Territories, and the Supreme Court of the United States; (4) “bankrupt” shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt; (5) “clerk” shall mean the clerk of a court of bankruptcy; (6) “corporations” shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association; (7) “court” shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee;

(8) "courts of bankruptcy" shall include the district courts of the United States and of the Territories, the supreme court of the District of Columbia, and the United States court of the Indian Territory, and of Alaska; (9) "creditor" shall include any one who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy; (10) "date of bankruptcy" or "time of bankruptcy" or "commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed; (11) "debt" shall include any debt, demand, or claim provable in bankruptcy; (12) "discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this Act; (13) "document" shall include any book, deed, or instrument in writing; (14) "holiday" shall include Christmas, the Fourth of July, the Twenty-second of February, and any day appointed by the President of the United States or of the Congress of the United States as a holiday or as a day of public fasting or thanksgiving; (15) a person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts; (16) "judge" shall mean a judge of a court of bankruptcy, not including the referee; (17) "oath" shall include affirmation; (18) "officer" shall include clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer; (19) "persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations; (20) "petition" shall mean a paper filed in a court of bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this Act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named; (21) "ref-

eree" shall mean the referee who has jurisdiction of the case, or to whom the case has been referred, or any one acting in his stead; (22) "conceal" shall include secrete, falsify, and mutilate; (23) "secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this Act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets; (24) "States" shall include the Territories, the Indian Territory, Alaska, and the District of Columbia; (25) "transfer" shall include the sale and every other and different mode of disposing or of parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security; (26) "trustee" shall include all of the trustees of an estate; (27) "wage-earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year; (28) words importing the masculine gender may be applied to and include corporations, partnerships, and women; (29) words importing the plural number may be applied to and mean only a single person or thing; (30) words importing the singular number may be applied to and mean several persons or things.

## II. CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION.

SECT. 2. That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their

principal place of business, reside or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdiction; (2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, or take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations, for violations of this Act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates,<sup>1</sup> and allow such officers additional compensation for such services, as provided in section forty-eight of this Act; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money, and distributed, and determine controversies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered; (9) confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bankrupts and

<sup>1</sup> The following portion of this sentence was added by the Amendment of 1903, with the exception of the final clause, which was amended in 1910. The final clause in the former amendment read: "but not at a greater rate than in this Act allowed for similar services."



set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; (19) transfer cases to other courts of bankruptcy<sup>1</sup>; and (20) exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy.

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

### III. BANKRUPTS.

SECT. 3. ACTS OF BANKRUPTCY.—*a.* Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such prefer-

<sup>1</sup> The succeeding portion of this sentence was added by the Amendment of 1910.

ence; or (4) made a general assignment for the benefit of his creditors,<sup>1</sup> or, being insolvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory, or of the United States; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

b. A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

c. It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this Act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

d. Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

e. Whenever a petition is filed by any person for the purpose

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<sup>1</sup> The succeeding portion of clause (4) was added by the Amendment of 1903.

of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond, with at least two good and sufficient sureties, who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

SECT. 4. WHO MAY BECOME BANKRUPTS.—*a.* Any person, except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.<sup>1</sup>

*b.* Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company,<sup>2</sup> and any moneyed, business, or commercial corporation, except a municipal, railroad, insurance, or banking corporation, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act.

The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory of the United States.<sup>3</sup>

SECT. 5. PARTNERS.—*a.* A partnership, during the continua-

<sup>1</sup> Until amended in 1910 the clause read: *a.* Any person who owes debts, except a corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.

<sup>2</sup> Before the Amendment of 1910, the succeeding portion of the paragraph read as follows: The word "mining" was inserted by the Amendment of 1910.

<sup>3</sup> The foregoing sentence was inserted by the Amendment of 1910.

tion of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

b. The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

c. The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

d. The trustees shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

e. The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

f. The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

g. The court may permit the proof of the claim of the partnership estate against the individual estates, and *vice versa*, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

h. In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

SECT. 6. EXEMPTIONS OF BANKRUPTS.—a. This Act shall not affect the allowance to bankrupts of the exemptions which are

prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

SECT. 7. DUTIES OF BANKRUPTS.—*a.* The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2) comply with all lawful orders of the court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this Act coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

*Provided, however,* That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof,

for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

SECT. 8. DEATH OR INSANITY OF BANKRUPTS.—*a.* The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided*, That in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

SECT. 9. PROTECTION AND DETENTION OF BANKRUPTS.—*a.* A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a State court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this Act.

*b.* The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

SECT. 10. EXTRADITION OF BANKRUPTS.—*a.* Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court

other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

SECT. 11. SUITS BY AND AGAINST BANKRUPTS.—*a.* A suit which is founded upon a claim for which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

*b.* The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

*c.* A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

*d.* Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

SECT. 12. COMPOSITIONS, WHEN CONFIRMED.—*a.* A bankrupt may offer, either before or after adjudication, terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors, and has filed in court the schedule of his property and the list of his creditors required to be filed by bankrupts. In compositions before adjudication the bankrupt shall file the required schedules, and thereupon the court shall call a meeting of creditors for the allowance of claims, examination of the bankrupt, and preservation or conduct of estates, at which meeting the judge or referee shall preside; and action upon the petition for adjudication shall be delayed until it shall be determined whether such composition shall be confirmed.<sup>1</sup>

*b.* An application for the confirmation of a composition may

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<sup>1</sup> The reading of this subdivision before the Amendment of 1910 follows: A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts.

be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

c. A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objection as may be made to its confirmation.

d. The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

e. Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

SECT. 13. COMPOSITIONS, WHEN SET ASIDE.—*a.* The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practised in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

SECT. 14. DISCHARGES, WHEN GRANTED.—*a.* Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

*b.* The judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by



the trustee or other parties in interest, at such time as will give the trustee or parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which such condition might be ascertained; or (3) obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person; or (4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property, with intent to hinder, delay, or defraud his creditors; or (5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (6) in the course of the proceedings in bankruptcy refused to obey any lawful order of, or to answer any material question approved by the court: *Provided*, That a trustee shall not interpose objections to a bankrupt's discharge until he shall be authorized so to do at a meeting of creditors called for that purpose.<sup>1</sup>

c. The confirmation of a composition shall discharge the bank-

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<sup>1</sup> In the original act the preceding subdivision read as follows: *b*. The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained.

In 1903 the portion of the subdivision after the words "as herein provided" was amended to read as follows: or (2) with intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which such condition might be ascertained; or (3) obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit; or (4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property with intent to hinder, delay, or defraud his creditors; or (5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (6) in the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court.

rupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

SECT. 15. DISCHARGES, WHEN REVOKED.—*a.* The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

SECT. 16. CO-DEBTORS OF BANKRUPTS.—*a.* The liability of a person who is co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

SECT. 17. DEBTS NOT AFFECTED BY A DISCHARGE.—*a.* A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are liabilities for obtaining property by false pretences or false representations, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation<sup>1</sup>; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

#### IV. COURTS AND PROCEDURE THEREIN.

SECT. 18. PROCESS, PLEADINGS, AND ADJUDICATIONS.—*a.* Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpœna, shall be made upon the person therein named as defendant in the same manner that service of

<sup>1</sup> This clause, before the Amendment of 1910, read as follows: (2) are judgments in actions for frauds, or obtaining property by false pretences or false representations, or for wilful and malicious injuries to the person or property of another.

such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service cannot be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits<sup>1</sup> to enforce a legal or equitable lien in courts of the United States, except that, unless the judge shall otherwise direct, the order shall be published not more than once a week for two consecutive weeks, and the return day shall be ten days after the last publication unless the judge shall for cause fix a longer time.

b. The bankrupt, or any creditor, may appear and plead to the petition within five<sup>2</sup> days after the return day, or within such further time as the court may allow.

c. All pleadings setting up matters of fact shall be verified under oath.

d. If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this Act, and make the adjudication or dismiss the petition.

e. If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge shall on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

f. If the judge is absent from the district, or the division of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee.

g. Upon the filing of a voluntary petition the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee.

<sup>1</sup> Before the Amendment of 1903 the succeeding portion of this subdivision read as follows: "In equity in courts of the United States."

<sup>2</sup> "Ten days" was the period allowed by the statute prior to the Amendment of 1903.

SECT. 19. JURY TRIALS.—*a.* A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his insolvency, except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

*b.* If a jury is not in attendance upon the court, one may be specially summoned for the trial, or the case may be postponed, or, if the case is pending in one of the district courts within the jurisdiction of a circuit court of the United States, it may be certified for trial to the circuit court sitting at the same place, or by consent of parties when sitting at any other place in the same district if such circuit court has or is to have a jury first in attendance.

*c.* The right to submit matters in controversy, or an alleged offense under this Act, to a jury shall be determined and enjoyed, except as provided by this Act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

SECT. 20. OATHS, AFFIRMATIONS.—*a.* Oaths required by this Act, except upon hearings in court, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

*b.* Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

SECT. 21. EVIDENCE.—*a.* A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt<sup>1</sup> and his wife, to appear in court or before a referee or the judge of any

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<sup>1</sup> Before the Amendment of 1903 the portion of the subdivision following the word "bankrupt" read as follows: Who is a competent witness under the laws of the State in which the proceedings are pending, to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this Act.

State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this Act: *Provided*, That the wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt.

b. The right to take depositions in proceedings under this Act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided.

c. Notice of the taking of depositions shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim notice shall also be served upon the claimant, and when in opposition to a discharge notice shall also be served upon the bankrupt.

d. Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

e. A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from a bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

f. A certified copy of an order confirming or setting aside a composition, or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made.

g. A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt if recorded would impart.

SECT. 22. REFERENCE OF CASES AFTER ADJUDICATION.—a. After a person has been adjudged a bankrupt, the judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee or specially with

only limited authority to act in the premises or to consider and report upon specified issues; or (2) to any referee within the territorial jurisdiction of the court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district.

*b.* The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

SECT. 23. JURISDICTION OF UNITED STATES AND STATE COURTS.—*a.* The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

*b.* Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant,<sup>1</sup> except suits for the recovery of property under section sixty, subdivision *b*; section sixty-seven, subdivision *e*; and section seventy, subdivision *e*.

*c.* The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits of the offenses enumerated in this act.

SECT. 24. JURISDICTION OF APPELLATE COURTS.—*a.* The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

<sup>1</sup> In the original Act the subdivision ended here. The exception of Sections 60 *b* and 67 *e* was made by the Amendment of 1903, that of Section 70 *e* by the Amendment of 1910.

*b.* The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

SECT. 25. APPEALS AND WRITS OF ERROR.—*a.* That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, to wit: (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

*b.* From any final decision of a court of appeals allowing or rejecting a claim under this Act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:—

1. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

2. Where some Justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this Act throughout the United States.

*c.* Trustees shall not be required to give bond when they take appeals or sue out writs of error.

*d.* Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

SECT. 26. ARBITRATION OF CONTROVERSIES.—*a.* The trustee

may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

*b.* Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

*c.* The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court, and shall have like force and effect as the verdict of a jury.

SECT. 27. COMPROMISES.—*a.* The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

SECT. 28. DESIGNATION OF NEWSPAPERS.—*a.* Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices required to be published by this Act, and orders which the court may direct to be published, shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

SECT. 29. OFFENSES.—*a.* A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

*b.* A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or



attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this Act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

c. A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

d. A person shall not be prosecuted for any offense arising under this Act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

SECT. 30. RULES, FORMS, AND ORDERS.—*a.* All necessary rules, forms, and orders as to procedure, and for carrying this Act into force and effect, shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

SECT. 31. COMPUTATION OF TIME.—*a.* Whenever time is enumerated by days in this Act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday.

SECT. 32. TRANSFER OF CASES.—*a.* In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy, each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest.

## V. OFFICERS, THEIR DUTIES AND COMPENSATION.

SECT. 33. CREATION OF TWO OFFICES.—*a.* The offices of referee and trustee are hereby created.

SECT. 34. APPOINTMENT, REMOVAL, AND DISTRICTS OF REFEREES.—*a.* Courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, (1) appoint referees, each for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause; and (2) designate, and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

SECT. 35. QUALIFICATIONS OF REFEREES.—*a.* Individuals shall not be eligible to appointment as referees unless they are respectively (1) competent to perform the duties of that office; (2) not holding any office of profit or emolument under the laws of the United States or of any State other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public; (3) not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and (4) residents of, or have their offices in, the territorial districts for which they are to be appointed.

SECT. 36. OATHS OF OFFICE OF REFEREES.—*a.* Referees shall take the same oath of office as that prescribed for judges of United States courts.

SECT. 37. NUMBER OF REFEREES.—*a.* Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy.

SECT. 38. JURISDICTION OF REFEREES.—*a.* Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to (1) consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examina-

tion of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act; (4) perform such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this Act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (5) upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

SECT. 39. DUTIES OF REFEREES.—*a.* Referees shall (1) declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable; (2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended; (3) furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; (4) give notices to creditors as herein provided; (5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so; (7) safely keep, perfect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded; (8) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail; (9) upon application of any party in

interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and (10) whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

b. Referees shall not (1) act in cases in which they are directly or indirectly interested; (2) practise as attorneys and counsellors at law in any bankruptcy proceedings; or (3) purchase, directly or indirectly, any property of an estate in bankruptcy.

SECT. 40. COMPENSATION OF REFEREES.—*a.* Referees shall receive as full compensation for their services, payable after they are rendered, a fee of fifteen<sup>1</sup> dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt,<sup>2</sup> and twenty-five cents for every proof of claim filed for allowance, to be paid from the estate, if any, as a part of the cost of administration, and from estates which have been administered before them one per centum commissions on all moneys disbursed to creditors by the trustee, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

b. Whenever a case is transferred from one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

c. In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee.

SECT. 41. CONTEMPTS BEFORE REFEREES.—*a.* A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent

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<sup>1</sup> The Amendment of 1903 substituted "fifteen" for "ten," the former reading.

<sup>2</sup> The succeeding portion of this subdivision, prior to the Amendment of 1913, read as follows: and from estates which have been administered before them one per centum commissions on sums to be paid as dividends and commissions, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

document; or (4) refuse to appear after having been subpoenaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to law: *Provided*, That no person shall be required to attend as a witness before a referee at a place outside of the State of his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

*b.* The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

SECT. 42. RECORDS OF REFEREES.—*a.* The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States.

*b.* A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file, constitute the records of the case.

*c.* The book or books containing a record of the proceedings shall, when the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the court of bankruptcy and shall there remain as a part of the records of the court.

SECT. 43. REFEREE'S ABSENCE OR DISABILITY.—*a.* Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge, temporarily fill the vacancy.

SECT. 44. APPOINTMENT OF TRUSTEES.—*a.* The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of

such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

SECT. 45. QUALIFICATIONS OF TRUSTEES.—*a.* Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

SECT. 46. DEATH OR REMOVAL OF TRUSTEES.—*a.* The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

SECT. 47. DUTIES OF TRUSTEES.—*a.* Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them upon property of such estates; (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest<sup>1</sup>; and such trustees, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied; (3) deposit all money received by them in one of the designated depositories; (4) disburse money only by check or draft on the depositories in which it has been deposited; (5) furnish such information concerning the estates of which they are the trustees and their administration as may be requested by parties in interest; (6) keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors de-

<sup>1</sup> The words after "in interest" in clause (2) were added by the Amendment of 1910.

tailed statements of the administration of the estates; (8) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; (9) pay dividends within ten days after they are declared by the referees; (10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and (11) set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

b. Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

c. The trustee shall, within thirty days after the adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution, and pay the fee for such filing, and he shall receive a compensation of fifty cents for each copy so filed, which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the cost and disbursements of the proceedings.<sup>1</sup>

SECT. 48. COMPENSATION OF TRUSTEES, RECEIVERS, AND MARSHALS.—*a.* Trustees shall receive for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and such commissions on all moneys disbursed or turned over to any person, including lien holders, by them, as may be allowed by the courts, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than fifteen hundred dollars, two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars. And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one half of one per centum

<sup>1</sup> The Amendment of 1903 added subdivision c.

of the amount to be paid the creditors on such compensation.<sup>1</sup>

b. In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

c. The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

d. Receivers or marshals appointed pursuant to section two, subdivision three, of this Act, shall receive for their services, payable after they are rendered, compensation by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees, as the court may allow, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars: *Provided*, That in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such compositions: *Provided further*, That when the receiver or marshal acts as a mere custodian

<sup>1</sup> Subdivision *a* was amended to this reading in 1910. The original reading was: *a*. Trustees shall receive, as full compensation for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered, such commissions on sums to be paid as dividends and commissions as may be allowed by the courts, not to exceed three per centum on the first five thousand dollars or less, two per centum on the second five thousand dollars or part thereof, and one per centum on such sums in excess of ten thousand dollars.

It was amended in 1903 to read as follows: and such commissions on all moneys disbursed by them as may be allowed by the courts, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than fifteen hundred dollars, two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars. And in case of the confirmation of a composition after the trustee has qualified the court may allow him as compensation, not to exceed one half of one per centum of the amount to be paid the creditors on such composition.



and does not carry on the business of the bankrupt as provided in clause five of section two of this Act, he shall not receive nor be allowed in any form or guise more than two per centum on the first thousand dollars or less, and one half of one per centum on all above one thousand dollars on moneys disbursed by him or turned over by him to the trustee and on moneys subsequently realized from property turned over by him in kind to the trustee: *Provided further*, That before the allowance of compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this Act.<sup>1</sup>

e. Where the business is conducted by trustees, marshals, or receivers, as provided in clause five of section two of this Act, the court may allow such officers additional compensation for such services by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and, in cases of receivers or marshals, also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees; such commissions not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars: *Provided*, That in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such composition: *Provided further*, That before the allowance of compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this Act.<sup>1</sup>

SECT. 49. ACCOUNTS AND PAPERS OF TRUSTEES.—a. The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

SECT. 50. BONDS OF REFEREES AND TRUSTEES.—a. Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such

<sup>1</sup> The Amendment of 1910 inserted subdivisions d and e.

courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

*b.* Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

*c.* The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

*d.* The court shall require evidence as to the actual value of the property of sureties.

*e.* There shall be at least two sureties upon each bond.

*f.* The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

*g.* Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

*h.* Bonds of referees, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be sued upon in the name of the United States, for the use of any person injured by a breach of their conditions.

*i.* Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under this Act, of whose estates they are respectively trustees.

*j.* Joint trustees may give joint or several bonds.

*k.* If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to

have declined his appointment, and such failure shall create a vacancy in his office.

*l.* Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

*m.* Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

SECT. 51. DUTIES OF CLERKS.—*a.* Clerks shall respectively (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk, referee and trustees in each case instituted before filing the petition, except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the petitioner is without, and cannot obtain, the money with which to pay such fees; (3) deliver to the referees upon application all papers which may be referred to them, or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail, and in like manner return papers which were received from such referees after they have been used; (4) and within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him, and to the trustee the fee collected for him at the time of filing the petition.

SECT. 52. COMPENSATION OF CLERKS AND MARSHALS.—*a.* Clerks shall respectively receive as full compensation for their service to each estate, a filing fee of ten dollars, except when a fee is not required from a voluntary bankrupt.

*b.* Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force, or such as may be hereinafter enacted, fixing the compensation of marshals.

SECT. 53. DUTIES OF ATTORNEY-GENERAL.—*a.* The Attorney-General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy;

the amount of the property of the estates; the dividends paid, and the expenses of administering such estates; and such other like information as he may deem important.

SECT. 54. STATISTICS OF BANKRUPTCY PROCEEDINGS.—*a.* Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney-General, for statistical purposes, within ten days after being requested by him to do so.

#### VI. CREDITORS.

SECT. 55. MEETINGS OF CREDITORS.—*a.* The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

*b.* At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

*c.* The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this Act.

*d.* A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

*e.* The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such

meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

*f.* Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

SECT. 56. VOTERS AT MEETING OF CREDITORS.—*a.* Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

*b.* Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

SECT. 57. PROOF AND ALLOWANCE OF CLAIMS.—*a.* Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and if so what, securities are held therefor, and whether any, and if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

*b.* Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

*c.* Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending or before the referee if the case has been referred.

*d.* Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

*e.* Claims of secured creditors and those which have priority

may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

*f.* Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

*g.* The claims of creditors who have received preferences, avoidable under section sixty, subdivision *b*, or to whom conveyances, transfers, assignments, or incumbrances, void or voidable under section sixty-seven, subdivision *e*, have been made or given, shall not be allowed unless such creditors shall surrender such preferences, conveyances, transfers, assignments, or incumbrances.<sup>1</sup>

*h.* The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

*i.* Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

*j.* Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby, and such interest as may have accrued thereon according to law.

*k.* Claims which have been allowed may be reconsidered for cause and reallocated or rejected in whole or in part, according

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<sup>1</sup> Before the Amendment of 1903, the reading of this subdivision was: *a.* The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

to the equities of the case, before but not after the estate has been closed.

*l.* Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim rejected in whole, or the proportional part thereof if rejected only in part.

*m.* The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

*n.* Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided*, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

SECT. 58. NOTICES TO CREDITORS.—*a.* Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the care by the creditors, unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the confirmation of compositions; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy; (8) the proposed dismissal of the proceedings and (9) there shall be thirty days' notice of all applications for the discharge of bankrupts.<sup>1</sup>

*b.* Notice to creditors of the first meeting shall be published at least once, and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

<sup>1</sup>The foregoing clause (9) was inserted by the Amendment of 1910. Before the Amendment of 1910 clause (2) ended with the additional words: "or the discharge of bankrupts."

c. All notices shall be given by the referee, unless otherwise ordered by the judge.

SECT. 59. WHO MAY FILE AND DISMISS PETITIONS.—*a.* Any qualified person may file a petition to be adjudged a voluntary bankrupt.

*b.* Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over, or if all of the creditors of such persons are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

*c.* Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

*d.* If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

*e.* In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition, or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

*f.* Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

*g.* A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by



consent of parties until after notice to the creditors,<sup>1</sup> and to that end the court shall, before entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, and shall cause notice to be sent to all such creditors of the pendency of such application, and shall delay the hearing thereon for a reasonable time to allow all creditors and parties in interest opportunity to be heard.

SECT. 60. PREFERRED CREDITORS.—*a.* A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.<sup>2</sup>

*b.* If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt be insolvent and the judgment or transfer then operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be

<sup>1</sup> The succeeding portion of subdivision *g* was added by the Amendment of 1910.

<sup>2</sup> Before the Amendment of 1903 the reading of the subdivision was: *a.* A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

voidable by the trustee and he may recover the property or its value from such person. And for the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.<sup>1</sup>

c. If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

d. If a debtor shall directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counsellor at law, a solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

#### VII. ESTATES.

SECT. 61. DEPOSITORIES FOR MONEY.—*a.* Courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time to time, as occasion may require, by like order increase the number of depositories or the amount of any bond or change such depositories.

<sup>1</sup> The original reading of this subdivision was: *b.* If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

The words "within four months, before the filing of a petition or after the filing of the petition and before the adjudication" were struck out by the Amendment of 1903 and the following words were added to the subdivision: "And, for the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State court, which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction." In 1910 this subdivision was amended to its present form.

SECT. 62. EXPENSES OF ADMINISTERING ESTATES.—*a.* The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

SECT. 63. DEBTS WHICH MAY BE PROVED.—*a.* Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract expressed or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

*b.* Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

SECT. 64. DEBTS WHICH HAVE PRIORITY.—*a.* The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

*b.* The debts to have priority, except as herein provided, and

to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases,<sup>1</sup> and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerks, travelling or city salesmen<sup>2</sup> or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

c. In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made, shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

SECT. 65. DECLARATION AND PAYMENT OF DIVIDENDS.—a. Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

b. The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends sub-

<sup>1</sup> The succeeding portion of clause (2) was added in 1903.

<sup>2</sup> The Amendment of 1906 added the words "travelling or city salesmen."

sequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order:<sup>1</sup> *Provided*, That the first dividend shall not include more than fifty per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed: *And provided further*, That the final dividend shall not be declared within three months after the first dividend shall be declared.

c. The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

d. Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such courts shall be paid any amounts.

e. A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this Act.

SECT. 66. UNCLAIMED DIVIDENDS.—a. Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

b. Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: *Provided*, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

SECT. 67. LIENS.—a. Claims which for want of record or for

<sup>1</sup>The succeeding portion of the subdivision was added by the Amendment of 1903.

other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

b. Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

c. A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this Act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

d. Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only,<sup>1</sup> not be affected by this Act.

e. That all conveyances, transfers, assignments, or encumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act subsequent to the passage of this Act and within four months

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<sup>1</sup> The Amendment of 1910 inserted the words: "to the extent of such present consideration only."

prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or encumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.<sup>1</sup>

For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

*f.* That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall

<sup>1</sup>The Amendment of 1903 added the succeeding portion of this subdivision.

be necessary to carry the purposes of this section into effect: *Provided*, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

SECT. 68. SET-OFFS AND COUNTERCLAIMS.—*a*. In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

*b*. A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

SECT. 69. POSSESSION OF PROPERTY.—*a*. A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released, if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property, or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

SECT. 70. TITLE TO PROPERTY.—*a*. The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested



by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: *Provided*, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

b. All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

c. The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

d. Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

e. The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its

value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.<sup>1</sup> For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State court which would have had jurisdiction, if bankruptcy had not intervened, shall have concurrent jurisdiction.

f. Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon reinvest in him.

SECT. 71. That the clerks of the several district courts of the United States shall prepare and keep in their respective offices complete and convenient indexes of all petitions and discharges in bankruptcy heretofore or hereafter filed in the said courts, and shall, when requested so to do, issue certificates of search certifying as to whether or not any such petitions or discharges have been filed; and said clerks shall be entitled to receive for such certificates the same fees as now allowed by law for certificates as to judgments in said courts: *Provided*, That said bankruptcy indexes and dockets shall at all times be open to inspection and examination by all persons or corporations without any fee or charge therefor.<sup>2</sup>

SECT. 72. That neither the referee, receiver, marshal, nor trustee shall in any form or guise receive, nor shall the court allow him, any other or further compensation for his services than that expressly authorized and prescribed in this Act.<sup>3</sup>

EFFECT OF BANKRUPT ACT ON PROCEEDINGS UNDER STATE LAWS.—a. This Act shall go into full force and effect upon its passage: *Provided, however*, That no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

b. Proceedings commenced under State insolvency laws before the passage of this Act shall not be affected by it.<sup>4</sup>

Approved July 1, 1898.

<sup>1</sup> The succeeding portion of this subdivision was added by the Amendment of 1903.

<sup>2</sup> Section 71 was added in 1903.

<sup>3</sup> Section 72 was added in 1903, except the words "receiver, marshal," which were inserted by the Amendment of 1910.

<sup>4</sup> The Acts of 1903 and 1910 contain provisions excluding from their application cases pending at the time of their enactment.

## GENERAL ORDERS IN BANKRUPTCY.

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### SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1898.

In pursuance of the powers conferred by the Constitution and laws upon the Supreme Court of the United States, and particularly by the act of Congress approved July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," it is ordered on this 28th day of November, 1898, that the following rules be adopted and established as general orders in bankruptcy, to take effect on the first Monday, being the second day, of January, 1899. And it is further ordered that all proceedings in bankruptcy had before that day, in accordance with the act last aforesaid, and being in substantial conformity either with the provisions of these general orders, or else with the general orders established by this court under the bankrupt act of 1867 and with any general rules or special orders of the courts in bankruptcy, stand good, subject, however, to such further regulation by rule or order of those courts as may be necessary or proper to carry into force and effect the bankrupt act of 1898 and the general orders of this court.

#### I. DOCKET.

The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection.

## II. FILING OF PAPERS.

The clerk or the referee shall indorse on each paper filed with him the day and hour of filing, and a brief statement of its character.

## III. PROCESS.

All process, summons and subpoenas shall issue out of the court, under the seal thereof, and be tested by the clerk; and blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the referees.

## IV. CONDUCT OF PROCEEDINGS.

Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Every party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practise in the circuit court or district court. The name of the attorney or counselor, with his place of business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required, and orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the act or by these general orders, required to be served on the party personally may be served upon his attorney.

## V. FRAME OF PETITIONS.

All petitions and the schedules filed therewith shall be printed or written out plainly, without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference.

## VI. PETITIONS IN DIFFERENT DISTRICTS.

In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicile, and the petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in

case of two or more petitions against the same partnership in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions shall be filed in different districts by different members of the same partnership for an adjudication of the bankruptcy of said partnership, the court in which the petition is first filed, having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed. But the court so retaining jurisdiction shall, if satisfied that it is for the greatest convenience of parties in interest that another of said courts should proceed with the cases, order them to be transferred to that court.

#### VII. PRIORITY OF PETITIONS.

Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

## VIII. PROCEEDINGS IN PARTNERSHIP CASES.

Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the partnership is not insolvent or has not committed an act of bankruptcy, and to make all defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

## IX. SCHEDULE IN INVOLUNTARY BANKRUPTCY.

In all cases of involuntary bankruptcy in which the bankrupt is absent or cannot be found, it shall be the duty of the petitioning creditor to file, within five days after the date of the adjudication, a schedule giving the names and places of residence of all the creditors of the bankrupt, according to the best information of the petitioning creditor. If the debtor is found, and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against the debtor, or may himself furnish such schedule as aforesaid.

## X. INDEMNITY FOR EXPENSES.

Before incurring any expense in publishing or mailing notices or in traveling, or in procuring the attendance of witnesses, or in perpetuating testimony, the clerk, marshal or referee may require, from the bankrupt or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt or other person shall be repaid him out of the estate as part of the cost of administering the same.

## XI. AMENDMENTS.

The court may allow amendments to the petition and schedules on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules. If amendments are made to separate schedules, the same must be made separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed.

## XII. DUTIES OF REFEREE.

1. The order referring a case to a referee shall name a day upon which the bankrupt shall attend before the referee; and from that day the bankrupt shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the referee a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court. A copy of the order shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the act or by these general orders to be had before the judge, shall be had before the referee.

2. The time when and the place where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the act to perform.

3. Applications for a discharge, or for the approval of a composition, or for an injunction to stay proceedings of a court or officer of the United States or of a State, shall be heard and decided by the judge. But he may refer such an application, or any specified issue arising thereon, to the referee to ascertain and report the facts.

## XIII. APPOINTMENT AND REMOVAL OF TRUSTEE.

The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge; and he shall be removable by the judge only.

## XIV. NO OFFICIAL OR GENERAL TRUSTEE.

No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases.

## XV. TRUSTEE NOT APPOINTED IN CERTAIN CASES.

If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed; but at any time thereafter a trustee may be appointed, if the court shall deem it desirable. If no trustee is appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called.

## XVI. NOTICE TO TRUSTEE OF HIS APPOINTMENT.

It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustee's bond.

## XVII. DUTIES OF TRUSTEE.

The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty days after the filing of the report. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before the judge, at a time



specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

#### XVIII. SALE OF PROPERTY.

1. All sales shall be by public auction unless otherwise ordered by the court.

2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

3. Upon petition by a bankrupt, creditor, receiver or trustee, setting forth that a part or the whole of the bankrupt's estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court.

#### XIX. ACCOUNTS OF MARSHAL.

The marshal shall make return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

#### XX. PAPERS FILED AFTER REFERENCE.

Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk.

## XXI. PROOF OF DEBTS.

1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred.

2. Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the postoffice box or street number, as he may appoint; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified in the proof of debt.

3. Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt and that it is entirely unsecured, or if secured, the security, as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim proved and entered on the referee's docket, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment; and, if no objection be entered within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

4. The claims of persons contingently liable for the bankrupt

may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish pro tanto the original debt.

5. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before a referee, or a United States commissioner, or a notary public. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

6. When the trustee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the referee to whom the case is referred for an order for such re-examination, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witnesses that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly.

#### XXII. TAKING OF TESTIMONY.

The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. A deposition taken upon an examination before a referee shall be taken down in writing by him, or under his direction, in the form of narrative, unless he determines that the examination shall be by question and answer. When completed it shall be read over to the witness and signed by him in the presence of the referee. The referee shall note upon the deposition any question objected to, with his decision

thereon; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

#### XXIII. ORDERS OF REFEREE.

In all orders made by a referee, it shall be recited, according as the fact may be, that notice was given and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests.

#### XXIV. TRANSMISSION OF PROVED CLAIMS TO CLERK.

The referee shall forthwith transmit to the clerk a list of the claims proved against an estate, with the names and addresses of the proving creditors.

#### XXV. SPECIAL MEETING OF CREDITORS.

Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of the creditors in order to carry out the purposes of the act, the court may call such a meeting, specifying in the notice the purpose for which it is called.

#### XXVI. ACCOUNTS OF REFEREE.

Every referee shall keep an accurate account of his traveling and incidental expenses, and of those of any clerk or any officer attending him in the performance of his duties in any case which may be referred to him; and shall make return of the same under oath to the judge, with proper vouchers when vouchers can be procured, on the first Tuesday in each month.

#### XXVII. REVIEW BY JUDGE.

When a bankrupt, creditor, trustee, or other person shall desire a review by the judge of any order made by the referee, he shall file with the referee his petition therefor, setting out the error complained of; and the referee shall forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon.

XXVIII. REDEMPTION OF PROPERTY AND COMPOUNDING  
OF CLAIMS.

Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit or lien, upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound and settle any debts or other claims due or belonging to the estate of the bankrupt, the trustee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the trustee.

## XXIX. PAYMENT OF MONEYS DEPOSITED.

No moneys deposited as required by the act shall be drawn from the depository unless by check or warrant, signed by the clerk of the court, or by a trustee, and countersigned by the judge of the court, or by a referee designated for that purpose, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the trustee or his clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any referee or clerk authorized to countersign said checks.

## XXX. IMPRISONED DEBTOR.

If, at the time of preferring his petition, the debtor shall be imprisoned, the court, upon application, may order him to be produced upon habeas corpus, by the jailor or any officer in whose custody he may be, before the referee, for the purpose

of testifying in any matter relating to his bankruptcy; and, if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of habeas corpus to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

#### XXXI. PETITION FOR DISCHARGE.

The petition of a bankrupt for a discharge shall state concisely, in accordance with the provisions of the act and the orders of the court, the proceedings in the case and the acts of the bankrupt.

#### XXXII. OPPOSITION TO DISCHARGE OR COMPOSITION.

A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be enlarged by special order of the judge.

#### XXXIII. ARBITRATION.

Whenever a trustee shall make application to the court for authority to submit a controversy arising in the settlement of a demand against a bankrupt's estate, or for a debt due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the application shall clearly and distinctly set forth the subject-matter of the controversy, and the reasons why the trustee thinks it proper and most for the interest of the estate that the controversy should be settled by arbitration or otherwise.

## XXXIV. COSTS IN CONTESTED ADJUDICATIONS.

In cases of involuntary bankruptcy, when the debtor resists an adjudication, and the court, after hearing, adjudges the debtor a bankrupt, the petitioning creditor shall recover, and be paid out of the estate, the same costs that are allowed to a party recovering in a suit in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner.

## XXXV. COMPENSATION OF CLERKS, REFEREES AND TRUSTEES.

1. The fees allowed by the act to clerks shall be in full compensation for all services performed by them in regard to filing petitions or other papers required by the act to be filed with them, or in certifying or delivering papers or copies of records to referees or other officers, or in receiving or paying out money; but shall not include copies furnished to other persons, or expenses necessarily incurred in publishing or mailing notices or other papers.

2. The compensation of referees, prescribed by the act, shall be in full compensation for all services performed by them under the act, or under these general orders; but shall not include expenses necessarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating testimony, or other expenses necessarily incurred in the performance of their duties under the act and allowed by special order of the judge.

3. The compensation allowed to trustees by the act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

4. In any case in which the fees of the clerk, referee and trustee are not required by the act to be paid by a debtor before filing his petition to be adjudged a bankrupt, the judge, at any time during the pendency of the proceedings in bankruptcy, may order those fees to be paid out of the estate; or may, after notice to the bankrupt, and satisfactory proof that he then has or can obtain the money with which to pay those fees, order him to pay them within a time specified, and, if he fails to do so, may order his petition to be dismissed.

## AMENDMENT TO GENERAL ORDERS IN BANKRUPTCY NO. 35.

It is ordered by the Court that General Order in Bankruptcy No. 35 be amended by adding the following sentence to subdivision 4: *He may also, pending such proceedings, both in voluntary and involuntary cases, order the commissions of referees and trustees to be paid immediately after such commissions accrue and are earned.*

## XXXVI. APPEALS.

1. Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.

2. Appeals under the act of the Supreme Court of the United States from a circuit court of appeals, or from the supreme court of a Territory, or from the supreme court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree, and shall be allowed by a judge of the court appealed from, or by a justice of the Supreme Court of the United States.

3. In every case in which either party is entitled by the act to take an appeal to the Supreme Court of the United States, the court from which the appeal lies shall, at or before the time of entering its judgment or decree, make and file a finding of the facts, and its conclusions of law thereon, stated separately; and the record transmitted to the Supreme Court of the United States on such an appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions of law.

## XXXVII. GENERAL PROVISIONS.

In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law



shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

XXXVIII. FORMS.

The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case.

## PART III.

### OFFICIAL FORMS IN BANKRUPTCY.

#### [Form No. 1.]

##### DEBTOR'S PETITION.

To the Honorable .....,

Judge of the District Court of the United States.

for the ..... District of .....

The petition of ....., of ....., in the county of ....., and district and State of ....., ..... [*state occupation*], respectfully represents:

That he has had his principal place of business [*or has resided, or has had his domicile*] for the greater portion of six months next immediately preceding the filing of this petition at ....., within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oaths, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts:

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts:

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

.....

....., *Attorney.*

United States of America, District of ....., ss.:

I, ....., the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

....., *Petitioner.*

Subscribed and sworn to before me this .... day of .....,  
A. D. 19..

.....,

.....,

[*Official character.*]

## SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT.

## SCHEDULE A. (1)

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

Claims which have priority.	Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, the fact must be stated).	When and where contracted.	Nature and consideration of the debt, and whether contracted as partner or joint contractor; and, if so, with whom.	Amount.	
						\$	cts.
(1.) Taxes and debts due and owing to the United States.							
(2.) Taxes due and owing to the State of _____, or to any county, district, or municipality thereof.							
(3.) Wages due workmen, clerks,* or servants, to an amount not exceeding \$300 each, earned within three months before filing the petition.							
(4.) Other debts having priority by law.							
Total.....							

\* Also traveling and city salesmen.

....., Petitioner.



## SCHEDULE A. (3)

*Creditors whose claims are unsecured.*

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, the fact must be stated).	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount	
					\$	cts.
				Total.....		

....., *Petitioner.*







SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

SCHEDULE B. (1)

*Real Estate.*

Location and description of all real estate owned by debtor, or held by him.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated value.	
			\$	cts.
		Total.....		

....., *Petitioner.*

SCHEDULE B. (2)  
Personal property.

	\$	cts.
a Cash on hand.....		
b Bills of exchange, promissory notes, or securities of any description (each to be set out separately).....		
c Stock in trade, in — business of —, at —, of the value of.....		
d Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz.....		
e Books, prints, and pictures, viz.....		
f Horses, cows, sheep, and other animals (with number of each), viz.....		
g Carriages and other vehicles, viz.....		
h Farming stock and implements of husbandry, viz.....		
i Shipping, and shares in vessels, viz.....		
k Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.....		
l Patents, copyrights, and trade-marks, viz.....		
m Goods or personal property of any other description, with the place where each is situated, viz.....		
Total.....		
....., Petitioner.		

SCHEDULE B. (3)  
Choses in action.

	\$	cts.
a Debts due petitioner on open account.....		
b Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds.....		
c Policies of insurance.....		
d Unliquidated claims of every nature, with their estimated value..		
e Deposits of money in banking institutions and elsewhere.....		
	Total.....	

....., Petitioner.

## SCHEDULE B. (4)

*Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.*

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

General interest.	Particular description.	Supposed value of my interest.	
		\$	cts.
Interest in land.....			
Personal property.....			
Property in money, stock, shares, bonds, annuities, etc.....			
Rights and powers, legacies and bequests.....			
Property heretofore conveyed for benefit of creditors.			
What portion of debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.		Amount realized from proceeds of property con- veyed.	
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.....		\$	cts.
Total.....		Total.....	
		....., Petitioner.	

SCHEDULE B. (5)

*A particular statement of the property claimed as exempted from the operation of the acts of Congress relating to bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.*

	Valuation.	
	\$	cts.
Military uniform, arms, and equipments.....		
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption..		
	Total.....	

....., *Petitioner.*

## SCHEDULE B. (6)

*Books, papers, deeds, and writings relating to bankrupt's  
business and estate.*

The following is a true list of all books, papers, deeds and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are herein-after set forth, with the reason for their custody of the same.

Books.	
Deeds.	
Papers.	

....., *Petitioner.*

## OATH TO SCHEDULE B.

United States of America, District of ....., ss.:

On this .... day of ....., A. D. 19.., before me personally came ....., the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

.....,

.....  
[Official character.]

## SUMMARY OF DEBTS AND ASSETS.

(From the statements of the bankrupt in Schedules A and B.)

Schedule A. 1	(1)	Taxes and debts due United States.....		
Schedule A. 1	(2)	Taxes due States, counties, districts, and municipalities.....		
Schedule A. 1	(3)	Wages.....		
Schedule A. 1	(4)	Other debts preferred by law.....		
Schedule A. 2		Secured claims.....		
Schedule A. 3		Unsecured claims.....		
Schedule A. 4		Notes and bills which ought to be paid by other parties thereto.....		
Schedule A. 5		Accommodation paper.....		
		Schedule A, total.....		
Schedule B. 1		Real estate.....		
Schedule B. 2	a	Cash on hand.....		
Schedule B. 2	b	Bills, promissory notes, and securities....		
Schedule B. 2	c	Stock in trade.....		
Schedule B. 2	d	Household goods, etc.....		
Schedule B. 2	e	Books, prints, and pictures.....		
Schedule B. 2	f	Horses, cows, and other animals.....		
Schedule B. 2	g	Carriages and other vehicles.....		
Schedule B. 2	h	Farming stock and implements.....		
Schedule B. 2	i	Shipping and shares in vessels.....		
Schedule B. 2	k	Machinery, tools, etc.....		
Schedule B. 2	l	Patents, copyrights, and trade-marks....		
Schedule B. 2	m	Other personal property.....		
Schedule B. 3	a	Debts due on open accounts.....		
Schedule B. 3	b	Stocks, negotiable bonds, etc.....		
Schedule B. 3	c	Policies of insurance.....		
Schedule B. 3	d	Unliquidated claims.....		
Schedule B. 3	e	Deposits of money in banks and elsewhere.		
Schedule B. 4		Property in reversion, remainder, trust, etc.....		
Schedule B. 5		Property claimed to be excepted.....		
Schedule B. 6		Books, deeds, and papers.....		
		Schedule B, total.....		

[Form No. 2.]

## PARTNERSHIP PETITION.

To the Honorable ..... ,

Judge of the District Court of the United States

for the ..... District of ..... :

The petition of ..... respectively represents :

That your petitioners and ..... have been partners under the firm name of ..... , having their principal place of business at ..... , in the county of ..... , and district and State of ..... , for the greater portion of the six months next immediately preceding the filing of this petition ; that the said partners owe debts which they are unable to pay in full ; that your petitioners are willing to surrender all their property for the benefit of their creditors, except such as is exempt by law, and desire to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by ..... oath, contains a full and true statement of all the debts of said partners, and, as far as possible, the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B, verified by .... oath, contains an accurate inventory of all the property, real and personal, of said partners, and such further statements concerning said property as are required by the provisions of said acts.

And said ..... further states that the schedule hereto annexed, marked C, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts ; and that the schedule hereto annexed, marked D, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ..... further states that the schedule



hereto annexed, marked E, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked F, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ..... further states that the schedule hereto, marked G, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked H, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ..... further states that the schedule hereto annexed, marked J, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts, and that the schedule hereto annexed, marked K, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore your petitioners pray that the said firm may be adjudged by a decree of the court to be bankrupts within the purview of said acts.

.....,  
.....,  
.....,

*Petitioners.*

....., *Attorney...*

....., the petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath

that the statements contained therein are true according to the best of their knowledge, information, and belief.

.....,

.....,

.....,

*Petitioners.*

Subscribed and sworn to before me this .... day of .....,  
A. D. 19...

.....,

*[Official character.]*

[Schedules to be annexed corresponding with schedules under Form No. 1.]

---

[Form No. 3.]

#### CREDITOR'S PETITION.

To the Honorable ..... , Judge of the District Court of  
the United States for the .... district of .....

The petition of ..... , of ..... , and .....  
....., of ..... and ..... of ..... , respectfully  
shows:

That ..... , of ..... , has for the greater portion  
of six months next preceding the date of filing this petition, had  
his principal place of business, [*or resided, or had his domicile*]  
at ..... , in the county of ..... and State and district afore-  
said, and owes debts to the amount of \$1,000.\*

That your petitioners are creditors of said ..... ,  
having provable claims amounting in the aggregate, in excess of  
securities held by them, to the sum of \$500. That the nature and  
amount of your petitioner's claims are as follows: .....

.....  
And your petitioners further represent that said .....  
..... is insolvent, and within four months next preceding the  
date of this petition the said ..... committed an act of  
bankruptcy, in that he did heretofore, to wit, on the ..... day  
of .....

---

\*[And is not a wage-earner nor chiefly engaged in farming or the tillage of the soil; (or, if a corporation), is a corporation principally engaged in, etc., . . .]

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon . . . . ., as provided in the acts of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

. . . . .,  
 . . . . .,  
 . . . . .,  
 . . . . .,

*Petitioners.*

. . . . . *Attorney.*

United States of America, District of . . . . . ss.:

. . . . ., . . . . ., . . . . ., being three of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

Before me, . . . . ., this . . . . . day of . . . . ., 19..

. . . . .,  
 . . . . .,

[*Official character.*]

[Form No. 4.]

#### ORDER TO SHOW CAUSE UPON CREDITOR'S PETITION.

In the District Court of the United States for the .... District of .....

In the matter of

.....Bankrupt.

#### *In Bankruptcy.*

Upon consideration of the petition of ..... that ..... be declared a bankrupt, it is ordered that the said ..... do appear at this court, as a court of bankruptcy, to be holden at ....., in the district aforesaid, on the .... day of ....., at .. o'clock in the ..... noon, and show cause, if any there be, why the prayer of said petition should not be granted, and

It is further ordered that a copy of said petition, together with a writ of subpoena, be served on said ....., by deliver-

ing the same to him personally or by leaving the same at his last usual place of abode in said district, at least five days before the day aforesaid.

Witness the Honorable ....., judge of the said court, and the seal thereof, at ....., in said district, on the .... day of ....., A. D. 19...

.....,  
Clerk.

---

[Form No. 5.]

#### SUBPOENA TO ALLEGED BANKRUPT.

United States of America, .... District of .....

To ....., in said district, greeting:

For certain causes offered before the District Court of the United States of America within and for the .... district of ....., as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at ....., in said district, on the .... day of ....., A. D. 19., ..... to answer to a petition filed by ..... in our said court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the Honorable ....., judge of said court, and the seal thereof, at ....., this .... day of ....., A. D. 19...

.....,  
Clerk.

---

[Form No. 6.]

#### DENIAL OF BANKRUPTCY.

In the District Court of the United States for the .... District of .....

In the matter of .....  
..... Bankrupt.

*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D. 19...

And now the said ..... appears, and denies that he has committed the act of bankruptcy set forth in said petition, or that he is insolvent, and avers that he should not be declared bankrupt for any cause in said petition alleged; and this he prays may be inquired of by the court [*or*, he demands that the same may be inquired of by a jury].

Subscribed and sworn to before me this .... day of ....., A. D. 19...

.....  
[*Official character.*]

---

[Form No. 7.]

## ORDER FOR JURY TRIAL.

In the District Court of the United States for the ..... District of .....

In the matter of  
.....Bankrupt.

*In Bankruptcy.*

At ....., in said district, on .... day of ....., A. D. 19...

Upon the demand in writing filed by ..... , alleged to be a bankrupt, that the fact of the commission by him of an act of bankruptcy, and the fact of his insolvency, may be inquired of by a jury, it is ordered, that said issue be submitted to a jury.

.....  
*Clerk.*

[Form No. 8.]

## SPECIAL WARRANT TO MARSHAL.

In the District Court of the United States for the .... District of .....

In the matter of  
.....Bankrupt.

*In Bankruptcy.*

To the marshal of said district or to either of his deputies, greeting:

Whereas a petition for adjudication of bankruptcy was, on the ..... day of ....., A. D. 19.., filed against ..... of the county of ..... and State of ....., in said district, and said petition is still pending; and whereas it satisfactorily appears that said ..... has committed an act of bankruptcy [*or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value*], you are therefore authorized and required to seize and take possession of all the estate, real and personal, of said ..... and of all his deeds, books of account, and papers, and to hold and keep the same safely subject to the further order of the court.

Witness the Honorable ....., judge of the said court, and the seal thereof, at ..... in said district, on the .... day of ....., A. D. 19...

.....,  
Clerk.

## RETURN OF THE MARSHAL THEREON.

By virtue of the within warrant, I have taken possession of the estate of the within-named ....., and of all his deeds, books of account, and papers which have come to my knowledge.

*Marshal* [*or Deputy Marshal*].  
*Fees and expenses.*

1. Service of warrant.....	\$	cts.
2. Necessary travel, at the rate of six cents a mile each way.		
3. Actual expenses in custody of property and other services as follows.....		
[Here state the particulars.]		

.....,  
*Marshal* [*or Deputy Marshal*].

District of ....., A. D. 19....

Personally appeared before me the said ....., and made oath that the above expenses returned by him have been actually incurred and paid by him, and are just and reasonable.

.....,  
*Referee in Bankruptcy.*

---

[Form No. 9.]

BOND OF PETITIONING CREDITOR.

Know all men by these presents: That we, ....., as principal, and ....., as sureties, are held and firmly bound unto ....., in the full and just sum of ..... dollars, to be paid to the said ....., executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this .... day of ....., A. D. 19...

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the .... district of ....., against the said ....., and the said ..... has applied to that court for a warrant to the marshal of said district directing him to seize and hold the property of said ....., subject to the further orders of said district court.

Now, therefore, if such a warrant shall issue for the seizure of said property, and if the said ..... shall indemnify the said ..... for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in

presence of..	..... [SEAL.]
.....	..... [SEAL.]
.....	..... [SEAL.]

Approved this .... day of ....., A. D. 19...

.....  
*District Judge.*

## [Form No. 10.]

## BOND TO MARSHAL.

Know all men by these presents: That we, . . . . ., as principal, and . . . . ., as sureties, are held and firmly bound unto . . . . ., marshal of the United States for the . . . district of . . . . ., in the full and just sum of . . . . . dollars, to be paid to the said . . . . ., his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Signed and sealed this . . . day of . . . . ., A. D. 19...

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the . . . district of . . . . ., against the said . . . . ., and the said court has issued a warrant to the marshal of the United States for said district, directing him to seize and hold property of the said . . . . ., subject to the further order of the court, and the said property has been seized by said marshal as directed, and the said district court upon a petition of said . . . . . has ordered the said property to be released to him.

Now, therefore, if the said property shall be released according to the said . . . . ., and the said . . . . ., being adjudged a bankrupt, shall turn over said property or pay the value thereof in money to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the

presence of.. . . . [SEAL.]

. . . . . [SEAL.]

. . . . . [SEAL.]

Approved this . . . day of . . . . ., A. D. 19...

. . . . .

*District Judge.*

## [Form No. 11.]

## ADJUDICATION THAT DEBTOR IS NOT BANKRUPT.

In the District Court of the United States for the . . . . . District of . . . . .

In the matter of  
 . . . . . Bankrupt.



*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D. 19.., before the Honorable ....., judge of the .... district of .....

This cause came on to be heard at ....., in said court, upon the petition of ..... that ..... be adjudged a bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, and [*Here state the proceedings, whether there was no opposition, or, if opposed, state what proceedings were had.*]

And thereupon, and upon consideration of the proofs in said cause [*and the arguments of counsel thereon, if any,*] it was found that the facts set forth in said petition were not proved; and it is therefore adjudged that said ..... was not a bankrupt, and that said petition be dismissed, with costs.

Witness the Honorable ....., judge of said court, and the seal thereof, at ....., in said district, on the .... day of ....., A. D. 19...

.....,  
Clerk.

[Form No. 12.]

## ADJUDICATION OF BANKRUPTCY.

In the District Court of the United States for the .... District of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D. 19..., before the Honorable ....., judge of said court in bankruptcy, the petition of ..... that ..... be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said ..... is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable ....., judge of said court, and the seal thereof, at ....., in said district, on the .... day of ....., A. D. 19...

.....,  
Clerk.

[Form No. 13.]

## APPOINTMENT, OATH, AND REPORT OF APPRAISERS.

In the District Court of the United States for the ..... District of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

It is ordered that ..... of ....., ..... of ....., and ..... of ....., three disinterested persons, be, and they are hereby, appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt set out in the schedules now on file in this court, and report their appraisal to the court, said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

Witness my hand this .... day of ....., A. D. 19...

.....,

*Referee in Bankruptcy.*

....District of ....., ss.:

Personally appeared the within named ..... and severally made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

.....

.....

.....

Subscribed and sworn to before me this .... day of .....,  
A. D. 19..

.....,

[*Official character.*]

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned us, and after a



## [Form No. 15.]

## ORDER OF REFERENCE IN JUDGE'S ABSENCE.

In the District Court of the United States for the ..... District of .....

In the matter of

..... Bankrupt.

*In Bankruptcy.*

Whereas on the .... day of ....., A. D. 19.., a petition was filed to have ..... of ..... in the county of ..... and district aforesaid, adjudged a bankrupt according to the provisions of the acts of Congress relating to bankruptcy; and whereas the judge of said court was absent from said district at the time of filing said petition [*or, in case of involuntary bankruptcy, on the next day after the last day on which pleadings might have been filed, and none have been filed by the bankrupt or any of his creditors*], it is thereupon ordered that the said matter be referred to ..... one of the referees in bankruptcy of this court, to consider said petition and take such proceedings therein as are required by said acts; and that the said ..... shall attend before the said referee on the .... day of ....., A. D. 19.., at .....

Witness my hand and the seal of the said court, at ....., in said district, on the .... day of ....., A. D. 19..

.....,  
Clerk.

## [Form No. 16.]

## REFEREE'S OATH OF OFFICE.

I, ....., do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as referee in bankruptcy, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God.

.....  
Subscribed and sworn to before me this .... day of ....., A. D. 19..

.....,  
District Judge.

## [Form No. 17.]

## BOND OF REFEREE.

Know all men by these presents: That we ..... of ..... as principal, and ..... of ..... and ..... of ....., as sureties, are held and firmly bound to the United States of America in the sum of ..... dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this .... day of ....., A. D. 19...

The condition of this obligation is such that whereas the said ..... has been on the .... day of ....., A. D. 19..., appointed by the Honorable ..... judge of the District Court of the United States for the .... District of ....., a referee in bankruptcy, in and for the county of ....., in said district, under the acts of Congress relating to bankruptcy.

Now, therefore, if the said ..... shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed  
in the presence of

....., [L. S.]  
....., [L. S.]  
....., [L. S.]

Approved this .... day of ....., A. D. 19...

.....,  
*District Judge.*

## [Form No. 18.]

## NOTICE OF FIRST MEETING OF CREDITORS.

In the District Court of the United States for the ..... District of .....

In Bankruptcy.

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

To the creditors of ..... of ....., in the county of ....., and district aforesaid, a bankrupt.

Notice is hereby given that on the .... day of ....., A. D. 19.., the said ..... was duly adjudicated bankrupt; and that the first meeting of his creditors will be held at ....., in ....., on the .... day of ....., A. D. 19.., at .. o'clock in the .....noon, at which time the said creditors may attend, prove their claims, appoint a trustee, examine the bankrupt, and transact such other business as may properly come before said meeting.

.....,  
*Referee in Bankruptcy.*

....., 19...

[Form No. 19.]

## LIST OF DEBTS PROVED AT FIRST MEETING.

In the District Court of the United States for the ..... District of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D. 19...  
before ....., referee in bankruptcy.

The following is a list of creditors who have this day proved their debts:

Names of creditors.	Residences.	Debts proved.	
		\$	cts.

.....,  
*Referee in Bankruptcy.*

## [Form No. 20.]

GENERAL LETTER OF ATTORNEY IN FACT WHEN CREDITOR IS NOT  
REPRESENTED BY ATTORNEY AT LAW.

In the District Court of the United States for the ..... Dis-  
trict of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

To ..... :

I, ....., of ....., in the county of ..... and  
State of ....., do hereby authorize you, or any one of you, to  
attend the meeting or meetings of creditors of the bankrupt  
aforesaid at a court of bankruptcy, wherever advertised or di-  
rected to be holden, on the day and at the hour appointed and  
notified by said court in said matter, or at such other place and  
time as may be appointed by the court for holding such meeting  
or meetings, or at which such meeting or meetings, or any ad-  
journment or adjournments thereof may be held, and then and  
there from time to time, and as often as there may be occasion,  
for me and in my name to vote for or against any proposal or  
resolution that may be then submitted under the acts of Con-  
gress relating to bankruptcy; and in the choice of trustee or  
trustees of the estate of the said bankrupt, and for me to assent  
to such appointment of trustee; and with like powers to attend  
and vote at any other meeting or meetings of creditors, or sit-  
ting or sittings of the court, which may be held therein for any  
of the purposes aforesaid; also to accept any composition pro-  
posed by said bankrupt in satisfaction of his debts, and to re-  
ceive payment of dividends and of money due me under any  
composition, and for any other purpose in my interest what-  
soever, with full power of substitution.

In witness whereof I have hereunto signed my name and af-  
fixed my seal the .... day of ....., A. D. 19...

....., [L. s.]

Signed, sealed, and delivered in the presence of.....

Acknowledged before me this .... day of ....., A. D. 19...

.....,

[Official character.]

[Form No. 21.]

## SPECIAL LETTER OF ATTORNEY IN FACT.

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

To ..... ,

..... :

I hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at ....., on the .... day of ....., before ....., or any adjournment thereof, and then and there ..... for ..... and in ..... name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

In witness whereof I have hereunto signed my name and affixed my seal the .... day of ....., A. D. 19...

..... , [L. S.]

Signed, sealed, and delivered in presence of

.....

Acknowledged before me this .... day of ....., A. D. 19...

..... ,  
 [Official character.]

[Form No. 22.]

## APPOINTMENT OF TRUSTEE BY CREDITORS.

In the District Court of the United States for the ..... District of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D. 19..., before ..... , referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the [*here insert the names of the newspapers*



*in which notice was published*], we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are at present at this meeting, do hereby appoint . . . . ., of . . . . ., in the county of . . . . . and State of . . . . ., to be the trustee . . . . . of the said bankrupt's estate and effects.

Signatures of creditors.	Residences of the same.	Amount of debt.	
		\$	cts.
			.

Ordered that the above appointment of trustee — be, and the same is hereby, approved.

.....,  
*Referee in Bankruptcy.*

[Form No. 23.]

#### APPOINTMENT OF TRUSTEE BY REFEREE.

In the District Court of the United States for the . . . . . District of . . . . .

In the matter of  
 . . . . . Bankrupt.

*In Bankruptcy.*

At . . . . ., in said district, on the . . . . day of . . . . ., A. D. 19 . . . ., before . . . . ., referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, and of which due

notice has been given in the [*here insert the names of the newspapers in which notice was published,*] I, the undersigned referee of the said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of trustee under the said bankruptcy; and I do hereby certify that the creditors whose claims had been allowed and were present, or duly represented, failed to make choice of a trustee of said bankrupt's estate, and therefore I do hereby appoint ..... of ....., in the county of ..... and State of ....., as trustee of the same.

.....  
*Referee in Bankruptcy.*

---

[Form No. 24.]

NOTICE TO TRUSTEE OF HIS APPOINTMENT.

In the District Court of the United States for the ..... District of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

To ....., of ....., in the county of ....., and district aforesaid:

I hereby notify you that you were duly appointed trustee [*or one of the trustees*] of the estate of the above-named bankrupt at the first meeting of the creditors, on the .... day of ....., A. D. 19..., and I have approved said appointment. The penal sum of your bond as such trustee has been fixed at ..... dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

Dated at ..... the .... day of ....., A. D. 19...

.....  
*Referee in Bankruptcy.*

---

[Form No. 25.]

BOND OF TRUSTEE.

Know all men by these presents: That we, ....., of ....., as principal, and ....., of ....., and

....., of ....., as sureties, are held and firmly bound unto the United States of America in the sum of ..... dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents:

Signed and sealed this .... day of ....., A. D. 19...

The condition of this obligation is such that whereas the above-named ..... was, on the .... day of ....., A. D. 19..., appointed trustee in the case pending in bankruptcy in said court, wherein ..... is the bankrupt, and he, the said ....., has accepted said trust with all the duties and obligations pertaining thereunto:

Now, therefore, if the said ....., trustee as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void; otherwise, to remain in full force and virtue.

Signed and sealed in

presence of..	....., [SEAL.]
.....	....., [SEAL.]
.....	....., [SEAL.]

---

[Form No. 26.]

ORDER APPROVING TRUSTEE'S BOND.

At a court of bankruptcy, held in and for the ..... District of ....., at ....., this .... day of ....., 19...

Before ....., referee in bankruptcy, in the District Court of the United States for the .... District of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

It appearing to the Court ....., of ....., and in said district, has been duly appointed trustee of the estate of the above-named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the amount

fixed by the creditors [*or by order of the court*], to wit, in the sum of ..... dollars, it is ordered that the said bond be, and the same is hereby, approved.

.....,  
*Referee in Bankruptcy.*

---

[Form No. 27.]

ORDER THAT NO TRUSTEE BE APPOINTED.

In the District Court of the United States for the ..... District of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appointment of a trustee of the bankrupt's estate is not now desirable, it is hereby ordered that, until further order of the court, no trustee be appointed and no other meeting of the creditors be called.

.....,  
*Referee in Bankruptcy.*

---

[Form No. 28.]

ORDER FOR EXAMINATION OF BANKRUPT.

In the District Court of the United States for the ..... District of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

At ....., on the .... day of ....., A. D. 19...

Upon the application of ..... trustee of said bankrupt [*or creditor of said bankrupt*], it is ordered that said bankrupt attend before ..... one of the referees in bankruptcy of this court, at ..... on the .... day of ....., at .. o'clock in the ..... noon, to submit to examination under the acts of Congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

.....,  
*Referee in Bankruptcy.*

## [Form No. 29.]

## EXAMINATION OF BANKRUPT OR WITNESS.

In the District Court of the United States for the ..... District of .....

In the matter of

..... Bankrupt.

*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D. 19..., before ....., one of the referees in bankruptcy of said court.

....., of ....., in the county of ....., and State of ....., being duly sworn and examined at the time and place above mentioned, upon his oath says. [*Here insert substance of examination of party.*]

.....,  
*Referee in Bankruptcy.*

## [Form No. 30.]

## SUMMONS TO WITNESS.

To .....:

Whereas ....., of ....., in the county of ..... and State of ....., has been duly adjudged bankrupt, and the proceeding in bankruptcy is pending in the District Court of the United States for the ..... District of .....

These are to require you, to whom this summons is directed, personally to be and appear before ....., one of the referees in bankruptcy of the said court, at ....., on the .... day of ....., at .. o'clock in the ..... noon, then and there to be examined in relation to said bankruptcy.

Witness the Honorable ....., judge of said court, and the seal thereof at ....., this .... day of ....., A. D. 19...

.....,  
*Clerk.*

## RETURN OF SUMMONS TO WITNESS.

In the District Court of the United States for the ..... District of .....

In the matter of

..... Bankrupt.

*In Bankruptcy.*

On this ..... day of ....., A. D. 19..., before me came  
 ....., of ....., in the county of ..... and State  
 of ....., and makes oath, and says that .... did, on ....., the  
 .... day of ....., A. D. 19..., personally serve .....  
 ....., of ....., in the county of ..... and State of  
 ....., with a true copy of the summons hereto annexed, by de-  
 livering the same to him; and he further makes oath, and says  
 that he is not interested in the proceeding in bankruptcy named  
 in said summons.

Subscribed and sworn to before me this .... day of .....,  
 A. D. 19...

## [Form No. 31.]

## PROOF OF UNSECURED DEBT.

In the District Court of the United States for the ..... Dis-  
 trict of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

At ....., in said district of ....., on the .... day of  
 ....., A. D. 19..., came ....., of ....., in the  
 county of ....., in said district of ....., and made oath, and  
 says that .... the person by [or against] whom a peti-  
 tion for adjudication of bankruptcy has been filed, was at and  
 before the filing of said petition and still is, justly and truly in-  
 debted to said deponent in the sum of ..... dollars; that the  
 consideration of said debt is as follows: .....  
 .....  
 that no part of said debt has been paid [except .... that there  
 are no set-offs or counterclaims to the same [except .....  
 .....  
 and that deponent has not, nor has any person by his order, or

to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

.....,  
*Creditor.*

Subscribed and sworn to before me this .... day of .....,  
 A. D. 19...

.....,  
 [Official character.]

[Form No. 32.]

PROOF OF SECURED DEBT.

In the District Court of the United States for the ..... District of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

At ....., in said district of ....., on the .... day of ....., A. D. 19..., came ....., of ....., in the county of ....., in said district of ....., and made oath, and says that ....., the person by [or against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of ..... dollars; that the consideration of said debt is as follows: .....

.....  
 that no part of said debt has been paid [except.....

.....  
 that there are no set-offs or counterclaims to the same [except

.....  
 and that the only securities held by this deponent for said debt are the following: .....

.....,  
*Creditor.*

Subscribed and sworn to before me this .... day of .....,  
 A. D. 19...

.....,  
 [Official character.]

[Form No. 33.]

## PROOF OF DEBT DUE CORPORATION.

In the District Court of the United States for the ..... District of .....

In the matter of

..... Bankrupt.

*In Bankruptcy.*

At ....., in said district of ....., on the .... day of ....., A. D. 19..., came ....., of ....., in the county of ....., and State of ....., and made oath and says that he is ..... of the ....., a corporation incorporated by and under the laws of the State of ....., and carrying on business at ....., in the county of ....., and State of ....., and that he is duly authorized to make this proof, and says that the said ....., the person by [or against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is, justly and truly indebted to said corporation in the sum of ..... dollars; that the consideration of said debt is as follows: .....  
 .....  
 that no part of said debt has been paid [except.....  
 .....  
 that there are no set-offs or counterclaims to the same [except .....  
 .....  
 and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever.

.....,

.....of said Corporation.

Subscribed and sworn to before me this .... day of .....,  
 A. D. 19...

.....,

[Official character.]



## [Form No. 34.]

## PROOF OF DEBT BY PARTNERSHIP.

In the District Court of the United States for the ..... District of .....

In the matter of

..... Bankrupt.

*In Bankruptcy.*

At ....., in said district of ....., on the .... day of ....., A. D. 19..., came ....., of ....., in the county of ....., in said district of ....., and made oath and says that he is one of the firm of ....., consisting of himself and ....., of ....., in the county of ..... and State of .....; that the said ....., the person by [or against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of ..... dollars; that the consideration of said debt is as follows: .....

..... that no part of said debt has been paid [except .....

..... that there are no set-offs or counterclaims to the same [except ..... and this deponent has not, nor has his said firm, nor has any person by their order, or to this deponent's knowledge or belief, for their use, had or received any manner of security for said debt whatever.

.....  
*Creditor.*

Subscribed and sworn to before me this ..... day of ....., A. D. 19...

.....  
[*Official character.*]

## [Form No. 35.]

## PROOF OF DEBT BY AGENT OR ATTORNEY.

In the District Court of the United States for the ..... District of .....

In the matter of

..... Bankrupt.

*In Bankruptcy.*

At ....., in said district of ....., on the .... day of ....., A. D. 19..., came ....., of ....., in the county of ....., and State of ....., attorney [or authorized agent] of ....., in the county of ..... and State of ....., and made oath and says that ....., the person by [or against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said ....., in the sum of ..... dollars; that the consideration of said debt is as follows: ..... that no part of said debt has been paid [except ..... and that this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use had or received any manner of security for said debt whatever. And this deponent further says, that this deposition cannot be made by the claimant in person because ..... and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

.....,  
 Subscribed and sworn to before me this .... day of .....,  
 A. D. 19...

.....,  
 [Official character.]

---

[Form No. 36.]

## PROOF OF SECURED DEBT BY AGENT.

In the District Court of the United States for the ..... District of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

At ....., in said district of ....., on the .... day of ....., A. D. 19..., came ....., of ....., in the

county of ....., and State of ....., attorney [*or* authorized agent] of ....., in the county of ....., and State of ....., and made oath, and says that ....., the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said ..... in the sum of ..... dollars; that the consideration of said debt is as follows: ..... that no part of said debt has been paid [except ..... that there are no set-offs or counter claims to the same [except ..... and that the only securities held by said ..... for said debt are the following: ..... and this deponent further says that this deposition cannot be made by the claimant in person because ..... and that he is duly authorized by his principal to make this deposition, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated.

Subscribed and sworn to before me this .... day of ....., A. D. 19...

.....,  
[*Official character.*]

[Form No. 37.]

AFFIDAVIT OF LOST BILL, OR NOTE.

In the District Court of the United States for the .... District of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

On this .... day of ....., A. D. 19..., at ....., came ....., of ....., in the county of ....., and State of ....., and makes oath and says that the bill of exchange

[*or note*], the particulars whereof are underwritten, has been lost under the following circumstances, to wit, .....

.....  
and that he, this deponent, has not been able to find the same;  
and this deponent further says that he has not, nor has the said  
....., or any person or persons to their use, to this  
deponent's knowledge or belief, negotiated the said bill [*or*  
*note*], nor in any manner parted with or assigned the legal or  
beneficial interests therein, or any part thereof; and that he, this  
deponent, is the person now legally and beneficially interested  
in the same.

*Bill or note above referred to.*

Date.	Drawer or maker.	Acceptor.	Sum.

.....,  
Subscribed and sworn to before me this .... day of .....,  
A. D. 19...

.....,  
[*Official character.*]

[Form No. 38.]

#### ORDER REDUCING CLAIM.

In the District Court of the United States for the .... District  
of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D.  
19...

Upon the evidence submitted to this court upon the claim of

..... against said estate [and, *if the fact be so*, upon hearing counsel thereon], it is ordered, that the amount of said claim be reduced from the sum of ....., as set forth in the affidavit in proof of claim filed by said creditor in said case, to the sum of ....., and that the latter-named sum be entered upon the books of the trustee as the true sum upon which a dividend shall be computed [*if with interest*, with interest thereon from the .... day of ....., A. D. 19...]

.....,  
*Referee in Bankruptcy.*

---

[Form No. 39.]

ORDER EXPUNGING CLAIM.

In the District Court of the United States for the .... District  
 of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D.  
 19...

Upon the evidence submitted to the court upon the claim of ..... against said estate [and, *if the fact be so*, upon hearing counsel thereon], it is ordered, that said claim be disallowed and expunged from the list of claims upon the trustee's record in said case.

.....,  
*Referee in Bankruptcy.*

---

[Form No. 40.]

LIST OF CLAIMS AND DIVIDENDS TO BE RECORDED BY REFEREE  
 AND BY HIM DELIVERED TO TRUSTEE.

In the District Court of the United States for the .... District  
 of .....

In the matter of ..... Bankrupt.

*In Bankruptcy.*

*A list of debts proved and claimed under the bankruptcy of ..... , with ..... dividend at the rate of .... per cent. this day declared thereon by ..... , a referee in bankruptcy.*

No.	Creditors. [To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth.]	Sum proved.		Dividend.	
		\$	cts.	\$	cts.

At ....., in said district, on the .... day of ....., A.D. 19...

.....  
Referee in Bankruptcy.

[Form No. 41.]

## NOTICE OF DIVIDEND.

In the District Court of the United States for the .... District  
of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

At ....., on the .... day of ....., A. D. 19... To  
.....

Creditor of ..... , bankrupt:

I hereby inform you that you may, on application at my office,  
....., on the .... day of ....., or on any day thereafter,

between the hours of . . . . ., receive a warrant for the . . . . . dividend due to you out of the above estate. If you cannot personally attend, the warrant will be delivered to your order on your filing up and signing the subjoined letter.

. . . . ., *Trustee*.

#### CREDITOR'S LETTER TO TRUSTEE.

To . . . . .,

Trustee in bankruptcy of the estate of . . . . .  
bankrupt:

Please deliver to . . . . . the warrant for dividend payable out of the said estate to me.

. . . . ., *Creditor*.

---

[Form No. 42.]

#### PETITION AND ORDER FOR SALE BY AUCTION OF REAL ESTATE.

In the District Court of the United States for the . . . District  
of . . . . .

In the matter of  
. . . . . Bankrupt.

#### *In Bankruptcy.*

Respectfully represents . . . . ., trustee of the estate of said bankrupt, that it would be for the benefit of said estate that a certain portion of the real estate of said bankrupt, to wit: [*here describe it and its estimated value*] should be sold by auction, in lots or parcels, and upon terms and conditions, as follows:

. . . . .  
Wherefore he prays that he may be authorized to make sale by auction of said real estate as aforesaid.

Dated this . . . day of . . . . ., A. D. 19...

. . . . ., *Trustee*.

The foregoing petition having been duly filed, and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or after hearing . . . . . in favor of said petition and . . . . . in opposition thereto*], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's real

estate specified in the foregoing petition, by auction, keeping an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this .... day of ....., A. D. 19...

.....  
*Referee in Bankruptcy.*

---

[Form No. 43.]

PETITION AND ORDER FOR REDEMPTION OF PROPERTY FROM LIEN.

In the District Court of the United States for the .... District  
 of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

Respectfully represents ..... , trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [*here describe the estate or property and its estimated value*] is subject to a mortgage [*describing the mortgage*], or to a conditional contract [*describing it*], or to a lien [*describing the origin and nature of the lien*], [*or, if the property be personal property, has been pledged or deposited and is subject to a lien*] for [*describe the nature of the lien*], and that it would be for the benefit of the estate that said property should be redeemed and discharged from the lien thereon. Wherefore he prays that he may be empowered to pay out of the assets of said estate in his hands the sum of ....., being the amount of said lien, in order to redeem said property therefrom.

Dated this .... day of ....., A. D. 19...

....., *Trustee*.....

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or after hearing* ..... in favor of said petition and ..... in opposition thereto], it is ordered that the said trustee be authorized to pay out of the assets of the bankrupt's estate spec-



ified in the foregoing petition the sum of ....., being the amount of the lien, in order to redeem the property therefrom.

Witness my hand this .... day of ....., A. D. 19...

.....  
*Referee in Bankruptcy.*

---

[Form No. 44.]

PETITION AND ORDER FOR SALE SUBJECT TO LIEN.

In the District Court of the United States for the .... District  
 of .....

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

Respectfully represents ..... , trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [*here describe the estate or property and its estimated value*] is subject to a mortgage [*describe mortgage*], or to a conditional contract [*describe it*], or to a lien [*describe the origin and nature of the lien*], or [*if the property be personal property*] has been pledged or deposited and is subject to a lien for [*describe the nature of the lien*], and that it should be for the benefit of the said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon.

Dated this .... day of ....., A. D. 19...

....., *Trustee.*

The foregoing petition having been duly filed and having come on for hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or after hearing* ..... in favor of said petition and ..... in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, by auction [*or at private sale*], keeping an accurate account of the property sold and the price received

therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this .... day of ....., A. D. 19...

.....,  
*Referee in Bankruptcy.*

---

[Form No. 45.]

PETITION AND ORDER FOR PRIVATE SALE.

In the District Court of the United States for the .... District  
of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

Respectfully represents ....., duly appointed trustee of the estate of the aforesaid bankrupt.

That for the following reasons, to wit, .....  
.....  
it is desirable and for the best interest of the estate to sell at private sale a certain portion of the said estate, to wit: .....

Wherefore he prays that he may be authorized to sell the said property at private sale.

Dated this .... day of ....., A. D. 19...

....., *Trustee.*

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [or after hearing ..... in favor of said petition and ..... in opposition thereto], it is ordered that the said trustee be authorized to sell a portion of the bankrupt's estate specified in the foregoing petition, at private sale, keeping an accurate account of each article sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this .... day of ....., A. D. 19...

.....,  
*Referee in Bankruptcy.*

## [Form No. 46.]

## PETITION AND ORDER FOR SALE OF PERISHABLE PROPERTY.

In the District Court of the United States for the .... District  
of .....

In the matter of

..... Bankrupt.

*In Bankruptcy.*

Respectfully represents ..... , the said bankrupt, [*or*  
a creditor, *or* the receiver, *or* the trustee of the said bankrupt's  
estate.]

That a part of the said estate, to wit, .....  
.....  
now in ....., is perishable, and that there will be loss if the  
same is not sold immediately.

Wherefore he prays the court to order that the same be sold  
immediately as aforesaid.

Dated this .... day of ....., A. D. 19...

..... ,  
The foregoing petition having been duly filed and having come  
on for a hearing before me, of which hearing ten days' notice  
was given by mail to the creditors of the said bankrupt, [*or* with-  
out notice to the creditors], now, after due hearing, no adverse  
interest being represented thereat [*or* after hearing .....  
..... in favor of said petition and ..... in opposi-  
tion thereto], I find that the facts are as above stated, and that  
the same is required in the interest of the estate, and it is there-  
fore ordered that the same be sold forthwith and the proceeds  
thereof deposited in court.

Witness my hand this .... day of ....., A. D. 19...

..... ,  
*Referee in Bankruptcy.*

## [Form No. 47.]

## TRUSTEE'S REPORT OF EXEMPTED PROPERTY.

In the District Court of the United States for the .... District  
of .....

In the matter of

..... Bankrupt.

*In Bankruptcy.*

At ....., on the .... day of ....., 19...

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under the provisions of the acts of Congress relating to bankruptcy.

General head.	Particular description.	Value.	
		\$	cts.
Military uniforms, arms, and equipments.....			
Property exempted by State laws.....			

....., *Trustee.*

[Form No. 48.]

## TRUSTEE'S RETURN OF NO ASSETS.

In the District Court of the United States for the .... District of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

At ....., in said district, on the .... day of ....., A. D. 19...

On the day aforesaid, before me comes ..... of ....., in the county of ..... and State of ....., and makes oath, and says that he, as trustee of the estate and effects of the above-named bankrupt, neither received nor paid any moneys on account of the estate.

Subscribed and sworn to before me at ....., this ..... day of ....., A. D. 19...

.....,  
*Referee in Bankruptcy.*



## [Form No. 50.]

## OATH TO FINAL ACCOUNT OF TRUSTEE.

In the District Court of the United States for the .... District  
of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

On this .... day of ....., A. D. 19.., before me comes  
....., of ....., in the county of ..... and State  
of ....., and makes oath, and says that he was, on the .... day  
of ....., A. D. 19.., appointed trustee of the estate and effects  
of the above-named bankrupt, and that as such trustee he has  
conducted the settlement of the said estate. That the account  
hereto annexed containing .... sheets of paper, the first sheet  
whereof is marked with the letter .... [*reference may here also  
be made to any prior account filed by said trustee*] is true, and  
such account contains entries of every sum of money received by  
said trustee on account of the estate and effects of the above-  
named bankrupt, and that the payments purporting in such  
account to have been made by said trustee have been so made by  
him. And he asks to be allowed for said payments and for com-  
missions and expenses as charged in said accounts.

....., *Trustee.*

Subscribed and sworn to before me at ....., in said district  
of ....., this .... day of ....., A. D. 19..

.....,  
[*Official character.*]

## [Form No. 51.]

## ORDER ALLOWING ACCOUNT AND DISCHARGING TRUSTEE.

In the District Court of the United States for the .... District  
of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

The foregoing account having been presented for allowance,  
and having been examined and found correct, it is ordered that

the same be allowed, and that the said trustee be discharged of his trust.

.....,  
*Referee in Bankruptcy.*

[Form No. 52.]

PETITION FOR REMOVAL OF TRUSTEE.

In the District Court of the United States for the .... District  
of .....

In the matter of  
..... Bankrupt.  
*In Bankruptcy.*

To the Honorable .....,

Judge of the District Court for the .... District of .....

The petition of ....., one of the creditors of said bankrupt, respectfully represents that it is for the interest of the estate of said bankrupt that ....., heretofore appointed trustee of said bankrupt's estate, should be removed from his trust, for the causes following, to wit: [*here set forth the particular cause or causes for which such removal is requested.*]

Wherefore ..... pray that notice may be served upon said ....., trustee as aforesaid, to show cause, at such time as may be fixed by the court, why an order should not be made removing him from said trust.

.....,  
*Creditor.*

[Form No. 53.]

NOTICE OF PETITION FOR REMOVAL OF TRUSTEE.

In the District Court of the United States for the .... District  
of .....

In the matter of  
..... Bankrupt.  
*In Bankruptcy.*

At ....., on the .... day of ....., A. D. 19...

To .....,

Trustee of the estate of ..... bankrupt.

You are hereby notified to appear before this court, at .....  
on the .... day of ....., A. D. 19..., at .. o'clock ... m.,  
to show cause (if any you have) why you should not be removed

from your trust as trustee as aforesaid, according to the prayer of the petition of . . . . ., one of the creditors of said bankrupt, filed in this court on the . . . . day of . . . . ., A. D. 19.., in which it is alleged [*here insert the allegation of the petition*].

. . . . .,  
Clerk.

---

[Form No. 54.]

ORDER FOR REMOVAL OF TRUSTEE.

In the District Court of the United States for the . . . . . District of . . . . .

In the matter of  
. . . . . Bankrupt.

*In Bankruptcy.*

Whereas . . . . ., of . . . . ., did, on the . . . . day of . . . . ., A. D. 19.., present his petition to this court, praying that for the reasons therein set forth, . . . . ., the trustee of the estate of said . . . . ., bankrupt, might be removed:

Now, therefore, upon reading the said petition of the said . . . . . and the evidence submitted therewith, and upon hearing counsel on behalf of said petitioner and counsel for the trustee, and upon the evidence submitted on behalf of said trustee,

It is ordered that the said . . . . . be removed from the trust as trustee of the estate of said bankrupt, and that the costs of the said petitioner incidental to said petition be paid by said . . . . ., trustee [*or out of the estate of the said . . . . ., subject to prior charges.*]

Witness the Honorable . . . . ., judge of the said court, and the seal thereof, at . . . . ., in said district, on the . . . . day of . . . . ., A. D. 19..

. . . . .,  
Clerk.



## [Form No. 55.]

## ORDER FOR CHOICE OF NEW TRUSTEE.

In the District Court of the United States for the ..... District  
of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

At ....., on the .... day of ....., A. D. 19...

Whereas by reason of the removal [*or* the death *or* resignation] of ....., heretofore appointed trustee of the estate of said bankrupt, a vacancy exists in the office of said trustee,

It is ordered, that a meeting of the creditors of said bankrupt be held at ....., in ....., in said district, on the .... day of ....., A. D. 19..., for the choice of a new trustee of said estate.

And it is further ordered that notice be given to said creditors of the time, place, and purpose of said meeting, by letter to each, to be deposited in the mail at least ten days before that day.

.....,  
*Referee in Bankruptcy.*

## [Form No. 56].

## CERTIFICATE BY REFEREE TO JUDGE.

In the District Court of the United States for the ..... District of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

I, ....., one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings; [*Here state the question, a summary of the evidence relating thereto; and the finding and order of the referee thereon.*].

And the said question is certified to the judge for his opinion thereon.

Dated this .... day of ....., A. D. 19...

.....,  
*Referee in Bankruptcy.*

[Form No. 57.]

BANKRUPT'S PETITION FOR DISCHARGE.

In the matter of  
 ..... Bankrupt.

*In Bankruptcy.*

To the Honorable ..... ,

Judge of the District Court of the United States for the  
 District of .....

....., of ....., in the county of ..... and State  
 of ....., in said district, respectfully represents that on the  
 .... day of ....., last past, he was duly adjudged bankrupt  
 under the acts of Congress relating to bankruptcy; that he has  
 duly surrendered all his property and rights of property, and  
 has fully complied with all the requirements of said acts and of  
 the orders of the court touching his bankruptcy.

Wherefore he prays that he may be decreed by the court to  
 have a full discharge from all debts provable against his estate  
 under said bankrupt acts, except such debts as are excepted by  
 law from such discharge.

Dated this .... day of ....., A. D. 19...

....., *Bankrupt.*

ORDER OF NOTICE THEREON.

District of ....., ss.:

On this .... day of ....., A. D. 19.., on reading the fore-  
 going petition, it is

Ordered by the court, that a hearing be had upon the same on  
 the .... day of ....., A. D. 19.., before said court, at  
 ....., in said district, at .... o'clock in the .... noon; and  
 that notice thereof be published in ..... , a newspaper

printed in said district, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petitioner should not be granted.

And it is further ordered by the court, that the clerk shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residence as stated.

Witness the Honorable ..... , judge of the said court, and the seal thereof, at ..... in said district, on the .... day of ....., A. D. 19...

..... ,  
Clerk.

.... hereby depose, on oath, that the foregoing order was published in the ..... on the following ..... days, viz.:

On the .... day of ..... and on the .... day of ....., in the year 19...

District of .....

....., 19...

Personally appeared ..... , and made oath that the foregoing statement by him subscribed is true.

Before me,

..... ,  
[Official character.]

I hereby certify that I have on this .... day of ....., A. D. 19.., sent by mail copies of the above order, as therein directed.

..... ,  
Clerk.

---

[Form No. 58.]

SPECIFICATIONS OF GROUNDS OF OPPOSITION TO BANKRUPT'S  
DISCHARGE.

In the District Court of the United States for the ..... District  
of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

....., of ....., in the county of ....., and State of ....., a party interested in the estate of said ..... bankrupt, do hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition do file the following specifications: [*Here specify the grounds of opposition.*]

....., *Creditor.*

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[Form No. 59.]

## DISCHARGE OF BANKRUPT.

District Court of the United States,

..... District of .....

Whereas, ....., of ....., in said district, has been duly adjudged a bankrupt, under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said ..... be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the .... day of ....., A. D. 19.., on which day the petition for adjudication was filed ..... him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable ....., judge of said district court, and the seal thereof this .... day of ....., A. D. 19...

.....,  
*Clerk.*

---

[Form No. 60.]

## PETITION FOR MEETING TO CONSIDER COMPOSITION.

District Court of the United States for the ..... District of .....

..... Bankrupt.

*In Bankruptcy.*

To the Honorable ....., Judge of the District Court of the United States for the ....., District of .....

The above-named bankrupt respectfully represents that a composition of ..... per cent. upon all unsecured debts, not entitled to a priority ..... in satisfaction of ..... debts

has been proposed by ..... to ..... creditors, as provided by the acts of Congress relating to bankruptcy, and ..... verily believe that the said composition will be accepted by a majority in number and in value of ..... creditors whose claims are allowed.

Wherefore he prays that a meeting of ..... creditors may be duly called to act upon said proposal for a composition, according to the provisions of said acts and the rules of court.

.....,  
*Bankrupt.*

---

[Form No. 61.]

APPLICATION FOR CONFIRMATION OF COMPOSITION.

In the District Court of the United States for the ..... District of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

To the Honorable ..... Judge of the District Court of the United States for the ..... District of .....

At ....., in said district, on the .... day of ....., A. D. 19..., now comes ....., the above-named bankrupt, and respectfully represents to the court that, after he had been examined in open court [*or* at a meeting of his creditors] and had filed in court a schedule of his property and a list of his creditors, as required by law, he offered terms of composition to his creditors, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount of such claims; that the consideration to be paid by the bankrupt to his creditors, the money necessary to pay all debts which have priority, and the costs of the proceedings, amounting in all to the sum of ..... dollars, has been deposited, subject to the order of the judge, in the ..... National Bank, of ....., a designated depository of money in bankruptcy cases.

Wherefore the said ..... respectfully asks that the said composition may be confirmed by the court.

.....,  
*Bankrupt.*

[Form No. 62.]

## ORDER CONFIRMING COMPOSITION.

In the District Court of the United States for the ..... District  
of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

An application for the confirmation of the composition offered by the bankrupt having been filed in court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited, having been deposited as ordered, in such place as was designated by the judge of said court, and subject to his order; and it also appearing that it is for the best interests of the creditors; and that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the acts of Congress relating to Bankruptcy: It is therefore hereby ordered that the said composition be, and it hereby is, confirmed.

Witness the Honorable ..... , judge of said court,  
and the seal thereof, this .... day of ....., A. D. 19...

.....,  
Clerk.

[Form No. 63.]

## ORDER FOR DISTRIBUTION ON COMPOSITION.

UNITED STATES OF AMERICA:

In the District Court of the United States for the .... District  
of .....

In the matter of  
..... Bankrupt.

*In Bankruptcy.*

The composition offered by the above-named bankrupt in this case having been duly confirmed by the judge of said court, it is hereby ordered and decreed that the distribution of the deposit

shall be made by the clerk of the court as follows, to wit: 1st, to pay the several claims which have priority; 2d, to pay the costs of proceedings; 3d, to pay, according to the terms of the composition, the several claims of general creditors which have been allowed; and appear upon a list of allowed claims, on the files in this case, which list is made a part of this order.

Witness the Honorable ..... , judge of said court,  
and the seal thereof, this .... day of ....., A. D. 19...

..... ,  
*Clerk.*

# THE LAW OF BANKRUPTCY

## PART IV: PROBLEMS

### I. EFFECT OF STATE INSOLVENCY LAWS.

(1) A, a resident of Minnesota, has a claim against B, of New York. Two-thirds of the creditors of B, under the insolvency act of New York, in 1897 released B from his debts. Must A accept the compromise?

(2) The Massachusetts insolvency laws, among other things, provided that counties should have certain priorities. It is claimed that counties cannot claim priorities since insolvency laws have been superseded by the National Bankruptcy Act.

### II. WHO MAY BECOME BANKRUPTS.

(3) A resided in Missouri, but for two months conducted a business in New York. He then assigned his business to X for the benefit of creditors. X proceeded to liquidate. In about five months after X took possession a proceeding to declare A a bankrupt was started in New York. Was the proceeding brought in the right place under Section 2, sub. 1, of the National Bankruptcy Act?

(4) A, a minor resident in Iowa, and working there as a clerk, owns a business in New York. He never visits the New York concern but acts through his brother-in-law. May A be declared a bankrupt in New York?

(5) A, an insane person, but not officially declared to be such, commits an act of bankruptcy. May he be declared a bankrupt? Suppose he had been judicially declared insane at the time the act was committed. What then?

(6) A, an insolvent retail store-keeper, commits an act of bankruptcy. He gives up his trade and becomes a farmer. May he be prosecuted as a bankrupt?

### III. THE PETITIONING CREDITORS.

(7) A owes \$3,000 to B, besides debts to twenty other creditors. B assigns \$1,000 to X and \$1,000 to Y and the three of them sign the petition in bankruptcy. Is it good?



(8) In the above case suppose the petition had been signed by B, X and Y but that X and Y had held claims assigned by M and N.

(9) A, a doctor, attends B in his illness, no amount having been agreed upon by the two as to the doctor's compensation. May the doctor become a petitioning creditor?

(10) On January 29, B assaulted C. On February 29 C joined with two others in a petition in bankruptcy against B. On March 29 C got a judgment of \$140 against B for damages in the assault. Is the petition good?

(11) M had fifteen creditors. He assigned all his property to X for the benefit of his creditors. All the creditors but A and B joined in the assignment. A signs a petition in bankruptcy alleging there are less than 12 creditors. Is the petition good?

(12) B and C accept the terms of A's assignment to X. May they become petitioning creditors?

(13) A has a claim of \$100 against B for goods sold, to be paid May 1, 1917. May A become a petitioning creditor on April 15, 1917?

#### IV. ACTS OF BANKRUPTCY.

##### *a. Fraudulent Acts.*

(14) A, who is insolvent, sells his house to B, but retains possession of the house. Is the sale fraudulent?

(15) A, an insolvent, sells some of his property, not exempt from seizure on behalf of creditors, and invests it in a home-stead, which, under the law of the state, is exempt from execution. What can his creditors do about it?

(16) A transfers all his property to his son, who agrees to support him, the father, for the rest of his life. In two months the father dies, leaving several debts unpaid. Is the son liable for them?

(17) A purchased wine from B at 92 cents a gallon. Later the wine was seized by B's creditors, who claim the transfer to A was invalid for want of adequate consideration. A sues to recover the value of the wine, which is found by jury to be twice what A paid for it. What judgment?

(18) A conveyed to B his house in consideration of \$8,000 due from B to A and "board and washing." It was shown that the

debt of \$8,000 was an honest debt, but that the "board and washing" was fictitious. Is the transfer in fraud of creditors?

(19) A fraudulently transfers his property subject to a mortgage to B, who pays off the mortgage. What are the rights of B and A's creditors?

(20) A fraudulently transfers his piano to B, who pays by check. Before the check is cashed B becomes aware of A's fraudulent intent. What should he do?

(21) A purchases a piano from B, who fraudulently acquired it from C with notice of the fraud. A has paid two installments of \$10 each on the purchase price of \$300. What are the rights of C's creditors, if at this time A learns of the fraud?

(22) A, who is insolvent, borrowed \$2,000 from B. He sold to B his house, worth \$8,000, with a secret agreement that B should return it upon repayment of the loan. What rights have A's creditors?

(23) A gives part of his property to his son, B. Upon A's death it transpires that his remaining property was inadequate to pay his debts. Have his creditors any claim against the son?

(24) A conveys all his property to B and then assaults X. He does not defend X's action, and the latter recovers a judgment for damages. Can he assail the transfer?

(25) A gives all his property to B. He then becomes indebted to X and has no way of paying the debt. What right has X?

(26) A transfers his property to B by way of gift but instructs B not to file the deed. A then enters upon a risky business and loses. What rights, if any, have his creditors?

(27) B has a mortgage on A's property. The property drops in value below the amount of the mortgage. To save foreclosure expenses A gives B a deed of the property. Have A's creditors any rights?

(28) A, who is insolvent, is in receipt of funds over and above what he finds necessary to expend for current expenses to the amount of \$1,500. He purchases various insurance policies for his wife and children, with the result that at his death he has paid enough to the insurance companies to pay his debts but his estate is insolvent. Have the creditors any redress?

#### *b. Preferences.*

(29) It is conceded that the fair value of A's property, consisting chiefly of the tangible assets of his business, its good will

and value as a going concern, is in excess of his liabilities. X obtains a judgment against A, levies on his property and sells it. In the forced sale the property sells for less than A's liabilities. Can the creditors in bankruptcy set aside the transaction within four months as a preference, assuming that X had reasonable cause to know the effect of his levy and sale?

(30) A knew he was insolvent. X demanded payment of his debt in full and threatened to start bankruptcy proceedings unless he was paid in full. A thereupon paid X in full. Did this constitute an act of bankruptcy?

(31) A is insolvent. In running his automobile he has injured X. To settle X's claim for damages, A pays X \$1,000. Has A committed an act of bankruptcy?

(32) A claims the proceeds of accounts receivable collected by the trustee in bankruptcy of X's estate. The facts show that A agreed to advance money to X up to 80% of the accounts receivable of X, and that A had the right to select such accounts as he desired. What are the rights of the parties?

(33) A gives his creditor X a mortgage to secure a new note given in place of an unevicenced debt due. Y claims there has been an act of bankruptcy. A contends the mortgage is not a transfer and that the mortgage was given for a new debt. Has A committed an act of bankruptcy?

(34) Suppose in the above example the mortgage had been given April 15th, had been filed May 15th, and that Y had filed his petition in bankruptcy on September 1st.

#### *c. Preference Through Legal Proceedings.*

(35) X procures judgment against A, an insolvent, who is out of the country. Upon his return he is served with the petition in bankruptcy, alleging that his judgment creditors have obtained a preference. A answers that he knew nothing of the matter and that there was no intent to defraud.

(36) On Tuesday creditors filed a petition in bankruptcy against A, alleging that his property was to be sold on Saturday under a judgment sale. A procures a postponement of the sale and his brother-in-law pays off the judgment. Was the petition prematurely filed?

#### *d. Assignments and Receiverships.*

(37) A and B were partners. A died, and his administrator, X, applied for and obtained the appointment of a receiver to

liquidate the firm's affairs. Has the business committed an act of bankruptcy?

(38) A partnership makes a general assignment for the benefit of its creditors. X, the creditor of one of the partners, A, files a petition against A, alleging that the assignment was an assignment of A's property. Can X sustain the petition?

(39) A is about to leave the country, and makes a general assignment to X, directing him to pay all creditors and turn the remainder over to A's wife. A petition is filed by three of his creditors. Has he committed an act of bankruptcy?

(40) The directors of the X Y Z Co. applied in a state court for a receiver in liquidation proceedings. Have they committed an act of bankruptcy?

#### *e. Insolvency.*

(41) A is guarantor of B's debt. If B does not pay, A would be insolvent. A gives a large part of his property to X. B pays his debt. A then loses money through causes arising subsequent to the payment of B's debt. His creditors claim that his gift to X was fraudulent.

(42) A owns stocks and bonds only. If the market goes down A will be insolvent. He gives away a part of his property, and the value of the rest falls to less than the amount of his debts. Have his creditors any rights?

#### V. PROVISIONAL REMEDIES.

(43) A made a general assignment of his property for the benefit of creditors to B. Thereafter certain creditors filed a petition to have A adjudicated bankrupt. B then sold A's property to C for an inadequate consideration. Have the creditors of A any remedy?

(44) Three hours before an involuntary petition was filed against A, he transferred \$15,000 to his son B, as agent for his father. This money was obtained by A, a few hours previous, from a mortgage of his real estate and a sale of his stock of merchandise. Later A was adjudicated bankrupt and a trustee elected. What may be done to prevent B from disposing of the \$15,000?

(45) Under the State law A was arrested and committed to prison for failure to pay a judgment for costs in a legal action.

Afterward, and while in custody, A filed a voluntary petition in bankruptcy. A asks the bankruptcy court to release him from jail on the ground that the judgment for costs is provable under 63 a (1), and would be barred by a discharge in bankruptcy because not within the exception of 17 a (a). Should A be released?

#### VI. PROVABLE CLAIMS.

(46) On July 1, a petition in bankruptcy was filed against B. On August 1, B was adjudicated a bankrupt. Between July 1 and August 1, B engaged C to perform certain legal services in matters unrelated to the bankruptcy proceedings. May C prove a claim against the bankrupt's estate for services rendered before August 1?

(47) A subscribed for \$1,000 of the capital stock of the National Express Company, paying \$10 down and agreeing to pay the balance "in such installments as may be called for by the company." Thereafter A became bankrupt. Subsequent to A's discharge from bankruptcy the Express Company levied an assessment of \$300 on A's subscription. A claims that his discharge in bankruptcy relieves him of all his obligations and refuses to pay the assessment. Is A's contention correct?

(48) January 3, A gives B his promissory note for \$1,000, due March 1. January 4, B endorses the note and sells it to C. January 10, a voluntary petition in bankruptcy is filed by B. February 5, B is adjudicated bankrupt. When the note becomes due, A fails to pay it. May C prove a claim for the note against B's estate?

(49) A entered into a contract to construct a building, and gave a bond to secure performance with the Guaranty Company as surety. A agreed to indemnify the Guaranty Company against any damage it might be compelled to pay for any default of A. A abandoned the contract in November, 1910; the owner completed it April 13, 1911, and on May 14, 1911, compelled the Guaranty Company to pay the amount expended in finishing the building in excess of the contract price. On May 29, 1911, A filed a voluntary petition in bankruptcy, and was discharged in October, 1911. Later the Guaranty Company sued A on the agreement of indemnity. A claims that the discharge in bankruptcy discharged him from liability under the agreement with the Guaranty Company. Is A's contention correct?

(50) On February 8, A, for valuable consideration, gave B his promissory note for \$6,000. The note was payable four months after date. On February 10, B endorsed it for value to C. Thereafter, and before the maturity of the note, A filed a voluntary petition in bankruptcy. C proved his claim as holder of the note and received a dividend of \$2,382.40, which was endorsed on the note. At maturity of the note it was duly protested and notice given to B, who paid C the balance of \$3,646.46 due on the note. A has, in the meantime, been discharged in bankruptcy. Thereafter B sues A for the \$3,646.46. A claims to have been released from all liability on the note through his discharge in bankruptcy. Is A's contention correct?

(51) In January, A became B's surety on a bond in favor of C; B agreed to reimburse A for any amount he might be compelled as surety to pay C. In March, B filed a petition in bankruptcy. In June, A was compelled to pay \$1,000 to C for breach of bond by B. After B's discharge in bankruptcy, C sues him for the \$1,000. B claims that C should have proven the debt in bankruptcy, and therefore he (B) is no longer liable. Is B's claim well founded?

(52) A gives B his note for \$2,000. B endorses the same to C for value. Thereafter A files a petition in bankruptcy. After C has made out an affidavit in due form for proving the debt, but before the first meeting of A's creditors, and therefore before the debt could be admitted to proof, B pays C \$500 on the note, so that C will release him (B) from further liability. The question now arises: Can C prove for the entire \$2,000, or must C first deduct the \$500 received from B and prove for only \$1,500?

(53) A and B, partners, make a partnership note for \$1,000, payable to A, which A endorses for value to C. Thereafter A and B become bankrupt. Can C prove his claim for the entire \$1,000 against the estates both of the firm and the endorsing partner before any dividend is declared on either?

(54) On March 2, A filed a voluntary petition in bankruptcy and was adjudged bankrupt. On June 22, B recovered judgment against A for \$5,000 upon a claim for profits from the infringement of a patent. May A prove this claim of \$5,000 against the bankrupt's estate?

(55) A ordered his broker, B, to buy 550 shares of Metropolitan Traction stock. B bought them and retained them as a pledge and security for the amount due from A on the stock. Thereafter B, without the knowledge of A, with intent to defraud and cheat A, sold the stock and converted the proceeds to his own use. Thereafter B became bankrupt and was duly discharged. Later A sued B in tort for fraudulently converting the property. B sets up that his discharge in bankruptcy discharged A's claim. What rights has A?

(56) In June, 1915, A agreed to deliver 80 bales of hops each year from 1915 to 1920, inclusive, to the B Company, a corporation of Missouri, for which the latter agreed to pay 15 cents a pound. The hops were to be delivered during the months of September to February. In October, 1915, the B Company was adjudged an involuntary bankrupt. A contends the bankruptcy of the B Company breached the contract. A claims to be damaged to the extent of \$5,000 by the breach, and asks the court to liquidate the damages so that they may be proved against the estate of the bankrupt. The question to be decided is, did the adjudication in bankruptcy against the B Company of itself constitute such a breach of the contract as to mature the whole executory contract, entitling the claimant to prove and have allowed against the estate in bankruptcy the damages claimed?

(57) A has broken his promise to marry B. Thereafter A becomes a bankrupt. Is B's claim for damage for A's breach of promise provable?

(58) A obtains a divorce from her husband, B. The court directs B to pay A alimony at the rate of \$50 a month. B fails to pay the alimony, and a year later files a petition in voluntary bankruptcy. May A prove her claim for \$600, alimony in arrears, at the time of filing the petition?

(59) A was indicted for keeping a disorderly house. A jury found him guilty and the court fined him \$400. Thereafter A became a voluntary bankrupt. The State attempts to prove its claim for the fine of \$400. The trustee objects. Should the trustee's objection be sustained?

(60) On August 14, 1907, A gave B a lease for five years with a rental of \$250 a month. The lease provided in part: "In case the lessee is declared a bankrupt, the lease shall terminate and the lessor has a right to re-enter, in which case the lessee

agrees, as a part consideration hereof, that it, and its legal representatives, will pay to the lessor and his legal representatives on the first day of each month, as upon rent days, the difference between the rents and sums otherwise reserved with due diligence collectible, on account of rents of the demised premises for the preceding month, up to the end of the term remaining at the time of entry. Such re-entry shall not prejudice the right of the lessor to recover amounts accrued or due at the time of such re-entry."

On January 20, 1908, a petition was filed against B, and on May 27, 1908, they were adjudged bankrupts. On April 29, A re-let the premises for the remainder of the term to C, who entered on July 1, 1908. The rent under the new lease was at the rate of \$175 per month from July 1, 1908, to February 1, 1909, and at a rate of \$250 per month thereafter. On July 14, A filed his claim as follows:

Full rent from February, 1908, to July, 1908..	\$1,250
Difference between rent received and rent stipulated in new lease from July, 1908, to February, 1909 .....	525
	<hr/>
	\$1,775

The trustee moves to expunge the claim. Shall the claim be allowed?

#### VII. PROPERTY PASSING TO TRUSTEE.

(61) On January 3, at 7 A. M., A's mother died. A had no relatives. At 1 o'clock of the same day a petition was filed against A. Does the property coming to A from his mother belong to him or to his trustee in bankruptcy?

(62) On December 17, an involuntary petition in bankruptcy was filed against J and A as partners and individually. On January 4, J committed suicide. On January 9, the firm and its members were adjudged bankrupt. What disposition should be made of J's insurance, made payable to J's estate?

(63) A had a claim for service against the R Company. He brought an action after he had been adjudicated a bankrupt. Since there was apparently no property and the creditors had no knowledge of this claim, a trustee was never elected. The



R Company defends on the ground that A had no legal title to the claim, his estate having passed over to his creditors.

(64) Mr. and Mrs. T were citizens and residents of Kansas. T owned property in Missouri. Under the law of Kansas the wife is not entitled to dower, but under the law of Missouri the wife is granted a right of dower in all real property owned by the husband at any time during the marriage. The trustee in bankruptcy of the estate of T relies on Section 8 of the Bankruptcy Act, and contends that he can sell the land in Missouri free from the wife's inchoate dower right.

(65) A, husband of B, became bankrupt. The trustee attempts to reach the interest of the husband in the wife's estate. A child has been born; the wife is still alive.

(66) A left property to his wife B for life, and gave B the right to determine the manner and proportions in which, at the death of B, the estate should be divided among X, Y and Z, and in default of the exercise of such right by B, A provided that the property should be left to X, Y and Z in equal shares. Y became a bankrupt and shortly thereafter B died, having appointed in his will X, Y and Z as the recipients of A's estate in equal shares. The trustee claims the share of Y on the principle that he obtained it under the will of A, B merely having exercised a power. Who has the right to the property?

(67) A has a license to sell liquors in Pennsylvania. The statutes of that state permit the license to be transferred subject to the approval of a court of quarter sessions. A becomes bankrupt. The trustee claims the license, but A claims it on the ground that he has no right to transfer it without the court's approval.

(68) A becomes bankrupt. His property is sold. It consists of the tangible assets, goodwill and other intangible values of A's business theretofore conducted at Merhaven. X purchases the property. A is discharged in bankruptcy, borrows money, sets up in business and solicits his old customers. X seeks an injunction to restrain A from conducting the business and soliciting the customers? Will it be granted?

(69) A, an inventor, applies for a patent. Before it is granted he becomes a bankrupt. Does the patent subsequently granted belong to the trustee?

(70) A had a policy of insurance which provided that it

would indemnify for fire originating on the premises only. A fire starting in the neighborhood destroyed A's house. A became bankrupt. The insurance company paid A one-half the amount of the policy. The trustee claimed the funds. What right, if any, has the trustee?

(71) A negligently injures B. B becomes a bankrupt. Does B's right to sue A for damages pass to the trustee in bankruptcy of his estate?

(72) Suppose, in the above case, B had recovered a judgment before the petition was filed? Before the adjudication?

(73) A, the trustee of B in bankruptcy, brings an action against X, under the banking act, to recover double the amount of interest paid by B to X under a usurious contract. X defends that the right of B to recover the double amount is a penalty and therefore cannot be transferred. For whom should judgment be given?

(74) S owned a six-year endowment policy on his life, payable to him or to his children. He becomes a bankrupt and surrenders the policy to the company. Can the trustee recover the policy?

(75) A, the wife of B, being possessed of a private estate, procured a policy on her life payable to B. B became a bankrupt. A continued paying the premiums and in less than a year died. Do the proceeds of the policy belong to B or to his trustee?

#### VIII. PREFERENCES.

(76) A calls up B and asks B for payment. B says it is inconvenient to pay, but that he will return the goods he has not yet used. All the other elements of preference are conceded to be present, but A insists that he did not know he was being preferred. Can the trustee in bankruptcy set the transfer aside?

(77) A is agent of P. A knew B's financial condition and told him that he had better settle his account with P if he desired additional credit. B gave P a mortgage of all his property. P knew nothing of B's condition. Is the preference voidable?

(78) A is unable to pay his debts as they mature in the ordinary course of business. X, a creditor, gets a judgment against A. Three creditors petition for the bankruptcy of A. A does

not defend. The trustee seeks to avoid the lien of the judgment on the ground that inability to pay debts shows insolvency.

(79) A has insufficient property, if his exempted property is excluded, to pay his debts. He gives a mortgage of part of his property to B, and within four months becomes a bankrupt. May the mortgage be set aside?

(80) A had assets amounting to \$7,561.91, which did not include a farm subject to a mortgage of \$5,000, sold by quit-claim deed to A's brother B for \$4,500. A kept the whereabouts of the \$4,500 secret, and upon the hearing of the petition in bankruptcy said he had invested it in distant lands. His liabilities, exclusive of the note secured by the mortgage on the farm, amounted to \$7,205.10. Was A insolvent?

(81) On January 2, A, while insolvent, transferred some accounts receivable to B for an antecedent debt. None of these accounts was collected till March 3. On June 15 an involuntary petition was filed against A. Can the money collected by B be recovered by the trustee?

(82) A borrows money from X, agreeing to repay it out of the proceeds of the sale of a piece of property he is trying to sell. Upon the sale of the piece of property the debt is paid, but within four months A becomes a bankrupt. X asserts the transaction constituted an equitable lien on the fund at the time of the original agreement. Is the lien avoidable?

(83) A, from time to time, drew drafts on B and placed in its (A's) vaults certain securities, marked "Escrow, for account of B." From time to time, with B's consent, A withdrew certain securities and substituted others. This practice went on for years. Its condition having become uncertain by reason of a panic, B's agent took possession of the securities, and within four months A became a bankrupt. Was this a voidable preference?

(84) B is the present owner of a note made a year ago by A to X and endorsed by X. A pays the note, and within four months becomes a bankrupt. Is the payment of the note a voidable preference as against B? As against X?

(85) B is a stockbroker and has bought stock for X on margin. B has pledged the stock, along with other securities, for a loan. X, learning of B's insolvent condition, pays up the stock and thus gets control of it. The market value of the stock

is greater than the amount paid up. Has B given X a voidable preference?

(86) A is a tenant on a year's lease of property belonging to B. On June 1, A pays rent due under the lease on that day, and on June 10 goes into bankruptcy. Has B received a preference?

(87) A, an insolvent, pays interest in advance. Is this a voidable preference?

(88) A, an insolvent, gives to B, within four months of the filing of a petition, collateral worth \$1,000 to secure \$500 theretofore loaned and \$500 loaned at the time. Has B been preferred?

(89) A, in 1912, gave B security worth \$1,000 for a contemporaneous loan of that amount. In June, 1913, the value of the security had depreciated to \$800. A replaced the security at that time with other security worth \$1,000, and in consideration B renewed the note for a year. Has B been preferred?

(90) A has discounted notes at the B bank, discounted by the latter for third persons. A, while insolvent, deposits money with the bank. Is this a preference?

(91) A, while insolvent, and within four months of the filing of a petition, performed services for X, a creditor, which were agreed by the two to equal the amount of the debt and to cancel it. The trustee claims that this was a preference, that X should have paid A the money value of A's services and then proved his claim against A with the other creditors.

(92) A, workman in the employ of B, has a claim of \$500 against him, for six months' wages. B, while insolvent and within four months of the filing of a petition in bankruptcy against him, pays A \$250. Is the payment a preference?

(93) A claims that he has not received a preference, since he was paid in money, and section 60 does not mention money, but speaks only of "a transfer of any of his property."

#### IX. LIENS NULLIFIED IN BANKRUPTCY

(94) A gave B a judgment note with collateral, the note appointing B A's agent to enter judgment on the note without notifying A. On August 1, B enters judgment without notifying A. It is proven that B did not know or have any reasonable cause for knowing that A was insolvent. May the trustee deem the judgment null and void?

(95) A mechanic, within four months of the filing of a petition against A, and while A is insolvent, files a mechanic's lien against A's property, together with an affidavit required by law. Is the lien void?

(96) B contracted to convey property to F. Consideration was paid, but the deed was not recorded till C attached the property. Under the state law the attachment was superior to the unrecorded deed. But in four months B became a bankrupt. The trustees in bankruptcy sought an order placing themselves in the position of C, under Section 67 f. It was contended by F that that section made the attachment lien null and void and therefore gave effect to his deed, which in the meantime he had recorded.

(97) A sells B a piano on conditional sale, the condition being that the title to the piano shall remain in A till the purchase price is paid in full. B becomes bankrupt. The trustee claims the title to the piano free of any lien. The state law provides that conditional sale agreements must be filed. To whom does the piano belong?

(98) In 1891, A made a mortgage to B of all his assets then used in his business or thereafter acquired in consideration of B's becoming surety on A's note to X. In 1900 there remained but two houses of the property originally in hand. A was unable to pay his note to X and B took his property and sold it. Within a month A was declared a bankrupt. The trustee in bankruptcy of A's estate sues to recover the proceeds of the sale on the ground that B did not have a valid lien and that B's possession of the after-acquired property under the mortgage of 1891 constituted a voidable preference.

(99) A gives B a defectively executed chattel mortgage on some of his property, which mortgage B records in an improper office on January 3. Subsequently some debtors of A obtain judgment, and A is put into bankruptcy on July 5. The trustee claims the property free from B's mortgage by virtue of clause 2 of Section 47 of the Bankruptcy Act. B claims his equity is better than that of the judgment creditors and that he has a valid preference.

#### X. VOIDABLE FRAUDULENT TRANSFERS.

(100) A, within four months of his bankruptcy, while insolvent, sold out his entire stock to X. It is shown that the stock

was reasonably worth more than X paid. It is claimed by X that he had no knowledge of A's insolvency or that the sale would hinder or delay the payment of A's debts. May the sale be set aside?

(101) A sells his property to B for a valuable consideration. It is shown that the sale will hinder or delay the creditors in establishing their rights. Can the transaction be set aside if B knows nothing of the situation at the time the sale is consummated? Suppose he did know; would the valuable consideration cure any defects?

(102) In which of the problems numbered 14 to 28, inclusive, could the trustee avoid the transfer if it had taken place within the period of four months prior to the filing of a petition in bankruptcy?

(103) In which of the same problems could the transfer be set aside if it had been made before the period of four months prior to the filing of the petition?

#### XI. SET-OFF AND COUNTER CLAIMS.

(104) A borrowed \$1,000 from B, and gave B 10 shares of stock as collateral security, which B promised to return on payment of the \$1,000 and interest. A and B then became co-sureties on a bond of C. C defaults, and A and B become liable as co-sureties for \$500. B paid the \$500. Thereafter A became bankrupt. Meanwhile, the debt of A to B became due. The stock held as collateral is worth \$1,200. The trustees of A's estate offer to pay B the amount of the debt and ask for a reconveyance of the stock. B, however, claims the right to set off the \$200 surplus against the other debt owing from A, i. e., A's liability as co-surety to B to contribute one-half of what B paid for both co-sureties. How would you decide this? Under the laws of Massachusetts, where this question arises, B has a right to sell the shares of A held as collateral after giving certain notice.

(105) A buys merchandise from B amounting to \$500. B buys merchandise from C amounting to \$1,500, and gives C a note for that amount. B becomes financially embarrassed and makes an assignment for the benefit of creditors. Before a petition in bankruptcy is filed against B, C transfers the note of B to A in order to get the full benefit of the set-off, subject to

an ultimate settlement between the parties after the amount of the dividends in bankruptcy should be ascertained. May A set off the note for \$1,500 against the \$500 which he owes B?

(106) B occupies a loft as tenant of A at a rental of \$300 a month. Through the negligence of A, water comes in upon the premises leased to B, and B's stock of merchandise is injured. B fails to pay rent for two months. A then becomes bankrupt. May B set off against his liability for rent to the bankrupt estate a claim for damages caused by the bankrupt's negligence?

#### XII. EXAMINATION OF BANKRUPT.

(107) Certain creditors of the bankrupts not having attended at the first meeting, when the bankrupts were present and ready for examination, but having afterwards been admitted to prove their claim, applied to the referee for order for an examination of the bankrupts in their behalf after the bankrupts had filed their application for discharge. Should the examination of the bankrupts be permitted?

#### XIII. CLAIMS HAVING PRIORITY.

(108) A trustee offers to pay the tax collector taxes, with the penalties of one per cent per month, as required by the state law, from the day the taxes became delinquent to the date of the adjudication in bankruptcy. The collector demands payment with penalties to the date of collection. The trustee relies on the rule that debts or claims cannot draw interest beyond the date of adjudication. How should the court decide the matter?

(109) The trustee set off for A, a bankrupt, as exempt property, a homestead on which taxes were due. The bankrupt asks the trustee to pay the taxes. The trustee refuses, claiming that under the bankruptcy law the trustee does not get title to the exempt property. The question is referred to the court. How should it decide?

(110) A is employed by B as a laborer at \$150 per month. A's wages have not been paid for three months, when B made a general assignment and became a bankrupt. Under the laws of Illinois, where A was employed, wages, irrespective of amount, earned within three months prior to the making of a general assignment, are given priority over other claims. Is A's claim for \$450 entitled to priority?

(111) A acquired, by assignment, several claims of \$200 each for wages, earned within three months before the commencement of proceedings in bankruptcy against B, the bankrupt debtor. The wages were assigned prior to the commencement of bankruptcy proceedings. Is A's claim entitled to priority?

#### XIV. DISTRIBUTION OF THE ESTATE.

(112) A trustee shows that he has converted the entire estate into money, and now petitions the referee that a final dividend be declared, and that the entire assets of the estate be distributed among the creditors whose claims have been proved and have been allowed. The referee held that enough should be withheld to pay the proportionate claims of scheduled debts which had not been proven, since the year in which to prove debts had not expired. The question is referred to the court. What should it decide?

(113) Under what circumstances might the creditors receive a dividend of 100%?

(114) The X Company has gone into bankruptcy and the trustee has received the following assets and must make a distribution to the following creditors:

Received from the sale of assets..... \$577.42

Creditors' claims to be settled:

A. Stenographer .....	\$14.00
B. Services as Special Master .....	8.00
C. Services as appraiser .....	3.00
D. Services as receiver .....	15.00
E. Attorney for receiver .....	10.21
E. Attorney for petitioning creditors .....	40.00
F. Services as appraiser .....	3.00
F. Services as appraiser .....	3.00
G. Stenographer .....	2.50
H. Rental of store for one month.....	40.00
I. Premium on trustee's bond .....	20.00
J. Trustee commissions .....	33.82
K. City taxes due .....	57.00
E. Disbursements as attorney for trustee.....	8.04
E. Counsel fee as attorney for trustee.....	63.25
L. Referee commissions .....	9.85



M. Clerical services .....	\$14.00
N. Travelling salesmen .....	28.00
O. General creditor .....	100.00
P. General creditor .....	300.00
Q. General creditor .....	75.00
R. Counsel for Q.....	40.00
S. Sundry creditors .....	60.00
T. Counsel for bankrupt .....	50.00
	<hr/>
	\$997.67

Prepare a final report and account of distribution of the trustee in bankruptcy of the above estate.

#### XV. COMPOSITIONS.

(115) A was adjudicated bankrupt. Appraisers have been appointed and have filed their reports, showing the value of the bankrupt's assets to be \$4,500. After A has filed a schedule and been examined he offers a composition at the rate of 15 per cent. Approximately \$1,500 is required to carry out the offer of composition. A majority in number and amount of all creditors whose claims have been allowed have accepted in writing the offer of composition. The referee reports these facts and recommends that the composition will be for the best interests of the creditors; that it is made in good faith, and not procured by any means, promises, or acts prohibited by the bankruptcy law; and that the bankrupts have not been guilty of any act, or of any failure in duty, which would be a bar to their discharge. Certain creditors object. Should the judge confirm the composition?

(116) A, having been adjudicated bankrupt, and having been duly examined, makes a very favorable composition offer, which is accepted by all but one small creditor. If the composition is not confirmed the creditors will suffer a financial loss. But it appears that A, "with fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed or failed to keep books of account or records from which his true condition might be ascertained." Should the court confirm the composition?

## XVI. DISCHARGE.

(117) Corporation A is bankrupt and in due course applies for a discharge. Creditors oppose the discharge on the following grounds: First, a corporation is not entitled under the Act to a discharge; second, the court can refuse a discharge for causes other than those mentioned in Section 14 of the Act, and should refuse to grant a discharge in this case by reason of the injurious effect it might have upon the creditors' right to enforce the secondary liability of the directors of the corporation under the state (Massachusetts) statute. Are these reasons sufficient to refuse A a discharge?

(118) A kept books to aid in the conduct of his business, but they did not show his financial condition. A became bankrupt, and in due time applied for a discharge, which was opposed by a creditor, who based his objection on 14, b, 2. Should the application to be discharged be granted?

(119) A borrowed from B \$40, gave B his promissory note, and at the same time executed a written assignment of his wages due or to become due from his present or future employers until the debt should be paid. A copy of the assignment was served on A's employer. Thereafter A became bankrupt and was duly discharged. May B now enforce the assignment against A's wages earned after the discharge in bankruptcy?

(120) A gave B a promissory note for \$750. B endorsed the same to C. Thereafter, on April 13, A filed a petition in bankruptcy and was discharged on September 12. A failed to schedule the claim of C, nor was any notice of the bankruptcy proceedings brought to C's attention until November 6. Was C's claim against A barred by the discharge in bankruptcy?

(121) A obtained a judgment against B on May 25, 1900. On April 2, 1904, B filed a petition in bankruptcy, the schedules giving A's residence as 212 Ninth Avenue, in the city of New York, which was his place of business. A's residence up to May 1, 1904, was Ridgewood, N. J., and after that date was at 238 West Twenty-first Street, in New York City. The city directories for 1904 and 1905 correctly gave his residence as above stated. A swears positively that he never received notice of defendant's bankruptcy. Would A's claim be barred by B's discharge in bankruptcy?

(122) A owed B \$4,000. A then became bankrupt, and while bankruptcy proceedings were pending wrote a letter containing the following: "Be satisfied; all will be right. I intend to pay all my just debts, if money can be made from hired labor. Security debt I cannot pay. . . . All will be right betwixt me and my just creditors." After A was discharged from bankruptcy B sues A for the debt. A sets up the discharge in bankruptcy as a bar. B claims A made a new promise in writing, in consequence of which B made no effort to collect the debt. Who wins?

#### XVII. PARTNERSHIPS.

(123) A and B are partners. The firm is now insolvent. A makes a general assignment of the partnership assets to C for the benefit of creditors. May the firm and A, individually, be petitioned into bankruptcy?

(124) A, B and C were partners. A and B disappeared with all the partnership funds and assets. C then set about to pay up the partnership debts, and succeeded in paying all but one, amounting to \$1,000, owing to X. C then became bankrupt. X presents his claim for \$1,000. Should X be entitled to share pro rata with the individual creditors of C?

(125) A, B, C, D and E are partners. A, B, C and D make a general assignment for the benefit of creditors, against the objections of E. The firm is adjudicated bankrupt, as are A and B individually. The other partners were not adjudicated bankrupt—C because he was a wage-earner, D because he was a tiller of the soil, and E because he had not committed any act of bankruptcy. May the bankruptcy court order C, D and E to turn over the possession of their personal property to the trustee, to be sold and distributed and administered the same as if each (C, D and E) had been adjudged bankrupt?



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